Supreme Court, U.S.

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No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

MARK B. RASMUSSON, et. al.,

Petitioners,

v.

LAWRENCE E. FROST, et. al.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the Court of Appeals has decided an important federal question in a way that conflicts with relevant decisions of this Court and in the alternative, the Court of Appeals has sanctioned such a departure from the accepted and usual course of judicial proceedings as to call for an exercise of this court's supervisory power, by summarily affirming the district court's granting of summary judgment on the issue of qualified immunity to both state, federal respondents, officers and private respondents, despite substantial issues of material facts concerning officers and private parties' improper motives and denying access to court, contrary to relevant decisions of this court.

2. Whether the Court of Appeals has decided an important federal question that the conduct of government agents in originating a criminal design, implanting in an innocent person's mind, while playing on the innocent person's fears, the disposition to believe that certain criminal activities are being carried on, and attempting to induce that person to assist the agents in fabricating a criminal nexus for the expressed purpose of using that fabricated criminal nexus against an investigatory target who is not engaging, has not engaged or shown any reasonable indication that he is likely to engage in illegal activity of a similar type being planted in the mind of the innocent person and where there is no legitimate ongoing sting operation, resulting in continuing unreasonable searches and seizures and unlawful disclosures to non law enforcement third parties, resulting in loss of liberty and property, constitutes an abuse of government power within the meaning of the Fourth, Fifth and Fourteenth Amendments, an issue that has not been, but should be, settled by this court?

3. Whether the Court of Appeals has decided an important federal question in upholding the District Court's ruling that conduct of respondent agents and private parties, where the agents solicited rumors and/or false information from private parties who in term intentionally and knowingly related rumors and/or false information to agents; where respondent agents placed in their affidavits and the government's system of records, voluminous misstatements, misrepresentations, false

statements and fabrications material to probable cause and other just outright inflammatory and vicious; where supervisors, prosecutors, and /or Assistant U.S. Attorneys, intentionally and knowingly approve, condone, ratify, or acquiesce to Respondents' misconduct, all for expressed purpose of causing Petitioners to be subjected to unreasonable searches and seizures and for expressed purpose of making unlawful disclosures to non-law enforcement third parties, where no extant criminal nexus, thereby resulting in loss of liberty and property, constitute Fourth, Fifth and Fourteenth Amendment violations, contrary to *Bryson v. United S States,* 396 U.S. 64 (1969); *United States v. Wong* 431 U.S. 174 (1977); *La Chance v. Erickson,* 522 U.S. 262 (1998), and other relevant cases.

4. Whether the Court of Appeals has decided an important federal question in upholding the District Court's ruling denying the Plaintiffs' motion to stay proceedings until such time as prior District Court judge, who has unique knowledge of his personal subjective thoughts behind rulings which effectively invalidated or discredited evidence adduced in criminal trial and now is being asserted by Respondents, has reviewed Plaintiffs' motion to (1) strike evidence (2) transfer matter as a connected case to prior District Court judge's docket, or in the alternative, (3) to allow Plaintiffs to amend their witness list and offer additional evidence on issue of qualified immunity constitutes denial of procedural due process under Fifth and Fourteenth Amendments so as to restrict Plaintiffs' access to court, an issue that has not been, but should be, settled by this Court?

PARTIES TO THE PROCEEDINGS

The names of all parties to the proceedings are as follows:

1. PETITIONERS

Mark B. Rasmusson
Deborah L. Rasmusson
Andrew A. Gantkessy
Rasmark Jet Charter, Inc.

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Robert L. Holler
Michael Wilczewski
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Amy Estrada
Irma Rodriguez
Gurdit Dhillon
Scott Doe
Flow Doe

Steven E. Perkins
Elias Chavez
Rafael Aguirre
Tom Lenox
Fonda Hivick
Robert Martinez
Socorro G. Simmons
Carol Hallett
John E. Hensly
Donald L. Reay
Michael T. Lappe
James F. Tighe
Larry Brown
Joe Acosta
Eric Mills
George J. Weise
John or Jane Does 1 through 25 are agents or supervisors or employees of the U.S. Customs Service or the U.S. Border Patrol or the Immigration and Naturalization Service or the Bureau of Alcohol, Tobacco, & Firearms or the U.S. Secret Service or the U.S. Marshals Service or the Federal Bureau of Investigation or the Drug Enforcement Administration or the Internal Revenue Service.

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Unrepresented Parties

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Mark B. Rasmusson ("M. Rasmusson"), Deborah L. Rasmusson ("D. Rasmusson), collectively ("the Rasmussons"), Andrew A. Gantkessy ("Gantkessy"), and Rasmark Jet Charter, Inc. ("Rasmark"), petitioners, pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case.

OPINION BELOW

The unpublished Per Curiam opinion of the court of appeals is reproduced in separate Appendix A, at App. 1-2 and the unreported opinion of the district court at App.3-95.

JURISDICTION

(i) Petitioners sought relief under 42 U.S.C. § 1983, The Privacy Act, and *Bivens Doctrine*, and pendant state law claims, in the District Court.

(ii) Petitioners seek review of the Per Curiam Opinion of the Fifth Circuit Court of Appeals entered on November 9, 1998.

(iii) Petitioners rely upon 28 U.S.C. § 1254(1) to confer on this Court jurisdiction to review the decision of the Court of Appeals on writ of certeiorari.

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES OF COURT

UNITED STATES CONSTITUTION

U.S. CONST. amend. I.
Congress shall make no law . . . abridging the freedom of speech , . . . or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. CONST. amend. IV.
The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. CONST. amend. V.
No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury . . . nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law ; . . .

U.S. CONST. amend. XIV.
. . .No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

UNITED STATES STATUTES

Title 42, U.S.C. § 1983
Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory of the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. . . .

The Privacy Act

STATEMENT OF CASE

This case concerns whether state and federal law enforcement officers, in conjunction with private parties, are all, including the private parties, entitled to qualified immunity from civil damages for unconstitutional violations committed while conducting a continuous investigation against predetermined targets, where such investigation is in retaliation against the targets for exercise of their First Amendment rights to petition the Government for a redress of grievances, has continued for a period of time in excess of five years, can continue to be renewed or recast indefinitely against the same predetermined targets, and lastly, can be so continued indefinitely where there is no legitimate sting operation, evidence of the commission of a crime, or evidence of any ongoing criminal nexus.

Because the petitioners complain of unlawful conduct from as early as 1987 and that this unlawful conduct was continuous up to and including the date of the filing of lawsuit, the record is necessarily voluminous, and for this reason, the petitioners incorporate as though fully set forth herein petitioners' third amended original petition in Appendix B, App.121-255; all petitioners' and other supporting affidavits, previously cited in Appendix C; all expert witnesses affidavits, previously cited in Appendix G; including all supporting documentation previously cited in Appendix F. In addition to the "State of the Case," this Court is respectfully referred to the appendices for more particularity, to assist in unraveling the material factual disputes.

The Respondents, and or their respective precedessors, have been investigating Petitioners Mark B. Rasmusson ("M. Rasmusson"), Deborah L. Rasmusson ("D. Rasmusson"), collectively, ("the Rasmussons") and Rasmark Jet Charter, Inc. ("Rasmark") since approximately 1988, and against Petitioner Andrew A. Gantkessy ("Gantkessy") since approximately 1993. Failing to succeed in understanding the disruption and destruction caused to their lives, their business, and their inability to stop the continuous disruption and destruction, even after appealing to Congressional leaders and the Federal Agency in question, the Petitioners were forced to file this

lawsuit on November 21, 1995.

The Respondents generally contend that they have been acting within the scope of their authority (see generally, Appendix E, Respondents' Affidavits, Admissions and Investigation Reports at App.908), that all actions taken at any time against any of the Petitioners have been lawful, and that all of their actions have been performed in good faith. The Respondents further contend that the investigation initiated against the Rasmussons initially, and later Gantkessy, was based on allegations of drug smuggling, money laundering, violations of the Bank Secrecy Act, kickback and or payoff schemes, mail fraud, and tax evasion.

The Rasmussons generally contend that the Respondents initiated an official investigation against them only after they complained to a U.S. Senator about the USCS. See generally App.1149–1165; the last response from the USCS being received in October of 1989. Petitioner Gantkessy contends that the Respondents began a vicious cycle of retaliation against him because he protested and refused to fabricate lies on the Rasmussons and Rasmark and refused to wear a wire for the purpose of helping the Respondents to make it appear as though the Rasmussons were engaging in some kind of kickback or payoff scheme against the Ford Motor Company ("Ford"), Gantkessy's now former employer, when he, Gantkessy, knew such allegations were false, resulting in great emotional and economic harm to the Petitioner (App.1480).

The district court relied on the respondents use of stale facts in their affidavits of November 19, 1993 (App.912-946), to support the respondents' position that the Rasmussons were involved in the Jesus Flores ("Flores") drug trafficking/money laundering organization. , (App.5, ¶ 2-5), in which the Rasmussons and Rasmark were investigated and M. Rasmusson indicted, tried and acquitted. The petitioners contend that there is a material factual dispute on the lawfulness or unlawfulness of the respondents' investigation ab initio. First, the respondents, and/or their respective predecessors and agencies, had been tracking Flores since as early as 1984, knew Flores associates, sources

of contraband, and modes of operation; none of years of investigation did the petitioners ever have any contact with Flores' drug trafficking, money laundering operations. The petitioners corroborated this contention with respondent Steven E. Perkins ("Perkins") meticulously detailed wiretap affidavit, (App.1169-1182). Second, the petitioners contend that the only reason the DEA respondents swept M. Rasmusson into Flores' superceding indictment is that they joined in the baseless investigation initiated by the USCS in 1989 against the Rasmussons. The petitioners presented to the district court DEA reports of investigation ("DEA-6's") showing where the respondent Perkins, and others, first launched its Organized Crime Drug Enforcement Task Force (OCDETF) investigation the Rasmussons and Rasmark about August 17, 1990, after Flores had been arrested on June 19, 1990 and indicted on June 20, 1990, and this so-called investigation (consisting of repeated interviews of the Rasmussons, their employees, subpoena of Rasmark business records, interview of Rasmark outside accountant and subpoena of numerous financial records from him) ended with the indictment of M. Rasmusson on September 19, 1990. See generally, App. 1183-1214 for DEA-6's concerning interviews.

The basis of the indictment, according to the respondents, and/or their predecessors and agencies, was the fact that Flores on approximately six to nine times chartered Rasmark aircraft for personal trips, none of which M. Rasmusson personally flew, but in any event, none of which had anything to do with Flores' criminal enterprise, as Flores very carefully kept his criminal life to himself and came to Rasmark as a legitimate business owner of a home remodeling company, which in fact did conduct legitimate business in the El Paso, Texas area. The petitioners contend the respondents reasons were a mere pretext to cover their unlawful acts. In support of this contention, the petitioners presented to the district court excerpts from the criminal trial transcript showing Flores also used the services of many other legitimate businesses, more intimately involved in Flores' criminal operation than the trips taken on Rasmark aircraft, and these businesses, too, were paid in cash; yet, none of these businesses were swept into the superceding indictment, but instead, testified as witnesses for the Government. See Rodeway Inn in Ontario, Canada (App.1176, ¶ k;

1240); Contel Cellular out of Atlanta, Georgia (1246); Easy Living in El Paso, Texas (App.1250); Industrial Communications in El Paso, Texas (App.1253; 1255); Southwestern Bell Telephone in El Paso, Texas (App.1173, ¶ f; 1174, ¶ b; 1178, ¶ h; 1258); and Tapaco Aircraft Parts and Accessories (App.1272-1278).

The petitioners further presented to the district court excerpts from the criminal trial transcript showing testimony received from 43 Government witnesses, including, in addition to the above-named legitimate businesses, officers from the Respondents' respective state and federal agencies, and in some instances, the very same officer involved in this present lawsuit,(App.1215-39). DEA Special Agents Thomas Lenox ("Lenox") and Steven E. Perkins ("Perkins"), respondents in this present case, testified repeatedly against Flores, using evidence that could not be used, and was not used, against M. Rasmusson. Additionally, witnesses from Rasmark testified on behalf of the Government: D. Rasmusson, as custodian of Rasmark's business records, two pilots, one former office manager, the dispatcher/sales representative, and Rasmark's outside accountant. And approximately 140 items of evidence, out of approximately 1,176 total items of evidence obtained during the OCEDETF and DPS investigation, were admitted into evidence. After the Government rested its entire case, the Honorable Chief Judge Hudspeth granted a judgment of acquittal before submission to the jury (App.1288, pg. 1042).

The foregoing facts are critical to the petitioners because the USCS respondents admitted they were investigating the Rasmussons as early as 1989. See deposition of USCS Special Agent Lawrence E. Frost at App.373, pg.19, L8-10. Flores did not first appear at Rasmark until February of 1990, (App.1195), and the DEA OCDETF records conclusively show neither the Rasmussons nor Rasmark was ever a part of that investigation.

Equally critical to the petitioners' contention of a bogus investigation is that the respondents knew the petitioners were not engaging any criminal activity and that all of their money was derived from either M. Rasmusson's inheritance, where millions of dollars were

paid to the IRS for taxes, or Rasmark. See generally, App.1142-1148.

In further support of the petitioners' contention that the respondents were conducting a bogus investigation is the failure of the respondents to utilize the investigative tool of researching the background, which in this case, was contained within their own records. Some of the respondents testified that they might have heard about the background as stated above, or maybe even read some of the background; some admitted they never reviewed any of the background; and some said it was not their responsibility to learn about the background. Representative examples are: Lawrence E. Frost ("Frost"): App. 377-90; Lenox: 462-65; Salas: 495-500; Hivick: 530-33; Schroeder: 566-74; Wilczewski: 801-02; Respondent Eric Mills ("Mills") during his January 1997 deposition testified "I don't recall having reviewed anything from that case [DEA OCDETF Flores investigation]." (Record below, depo. Pg.20-21). Internal Revenue Service ("IRS") SA Fonda Hivick ("Hivick") testified she was not even aware that the USCS SA John Peterson ("Peterson") had conducted an earlier investigation of the petitioners, (App.548, pg.35, L2-L9).

There is a gap in the respondents' so-called investigation; the period subsequent to M. Rasmusson's acquittal in July of 1991 and the continuation of the investigation by the alleged newly formed USCS Financial Task Force (FTF) in March of 1992. The petitioners contend that there is a material factual dispute on whether the FTF ever existed as a formal task force, or whether it was formed as a pretext for this lawsuit. The petitioners support this contention with the respondents' own records. The respondent Frost was alleged to be the lead case agent for the FTF; he prepared three affidavits none of which ever mentions a FTF. See affidavits: May 26, 1992 (App.908, ¶ 3); November 19, 1993, two of same date essentially same, only one in appendix, (App.913, ¶ 6). The respondents gave conflicting accounts on the initiation of the investigation and when. Frost testified that the Rasmussons and Rasmark were part of a larger money laundering investigation, which he identified as Guillermo Portillo ("Portillo"), allegedly connected to Flores through Portillo's alleged associate (App.920, ¶ 26-29) and connected to the Rasmussons through Portillo

(App.391-394); however, no where in the three affidavits identified above does the name Portillo appear. The petitioners contend the respondents were again fabricating the appearance of a criminal nexus, simply because Rasmark had a legitimate business relationship with Portillo to maintain his legal aircraft, all found in the Federal Aviation Administration ("FAA") Aircraft Registry Records, (App.1166-1167); FAA Aircraft Lien Release where Rasmark properly filed lien for nonpayment of bill, (App.1168a-1168b); and letter dated March 7, 1991 from Rasmark acknowledging receipt of payment and ending of business relationship, (App.1168). Everything that had anything to do with Portillo and Rasmark occurred and concluded months before DEA OCDETF criminal trial of M. Rasmusson, therefore, Frost's testimony is per se false.

To further support petitioners' contention of a bogus investigation, DEA SA Thomas Lenox ("Lenox"), one of the two lead case agents for the DEA OCDETF investigation against Flores, Perkins being the other, testified concerning allegations made by Frost in his November 19, 1993 affidavit. Frost states he received a written report from FBI respondent Joe Acosta ("Acosta"), in which a confidential informant alleged stated Flores and his associate Bermudez were introduced to M. Rasmusson in 1988; that M. Rasmusson became involved in money laundering with Flores, was buying aircraft parts with the proceeds of trafficking, involved with Hector Saenz who worked with Ricardo Valdez in their money laundering activities; that M. Rasmusson traveled throughout the United States in his aircraft collecting proceeds of trafficking; and that M. Rasmusson received approximately $500,000.00 in controlled substance proceeds from Flores during 1989 and 1990, which M. Rasmusson allegedly used to purchase aircraft parts, aircraft engines and pay expenses during his money laundering activities; see (App.920, ¶ 25-29). Lenox testified that he does not believe the DEA OCDETF uncovered any facts that M. Rasmusson had received over $500,000 in money laundering proceeds from Flores (App.467-68). Regarding evidence that indicated M. Rasmusson was purchasing aircraft parts as part of Flores money laundering operation, Lenox testified "I don't recall that, no." (App.468, L8-13) Regarding the FBI confidential source, Lenox

testified "[t]he FBI didn't tell us anything. We don't get along very well, the DEA and the FBI, so, no." (App.468, L14-20).

To further support the petitioners' contention of bogus investigation, the boxes in which the FTF seized all of Rasmark's business records on November 22, 1993 contained an evidence label showing the name "Portillo" and the case number: "EP02CR90EP0013 - PORTILLO"; see App. 1340. This is the same case number the respondents placed the investigation against the petitoners: affidavit of Assistant Special Agent in Charge (ASAC) Donald Reay ("Reay"), second only to the top official in the El Paso-Albuquerque Office, SAC Michael Lappe´ ("Lappe´), at App.1035, ¶ 2. Reay's declaration lends further support to the petitioners' contention where he states "the Rasmark case was adopted under Ops Transwestern because it was an 'air transport' initiative and Rasmark is an air transport company." Id. The petitioners presented to the district court documentation showing Ops Transwestern had absolutely nothing to do with the alleged Rasmark investigation, and that the USCS Group Supervisor Ward Olson ("Olson"), who supervised Ops Transwestern, protested all the way to the then Commission Carol Hallett and to Congressional leaders, the actions of Reay and Lappe´ in removing funds from his lawful investigation to use on a non-related money laundering investigation in El Paso. See letter to Carol Hallett at App.1372; excerpts from Lappe´'s memorandum concerning Olson, detailing information about Ops Transwestern at App.1368-1371; newspaper article in which Olson relates details about his protest at App.1363-1367; and excerpts from Blue Ribbon Panel Report concerning Congressional Hearings on gross misconduct in the Southwest USCS offices at App.1356-1362.

Further support of petitioners' contention of bogus investigation is fact that IRS performed and completed an audit of Rasmark in April of 1992, just a month after the FTF was allegedly formed to investigate the petitioners, declaring a "no change" audit result. (App.1290-1291). Internal Revenue Service ("IRS") SA Fonda Hivick ("Hivick") testified that she might have seen some tax records, (App.552, L20 - App.554, L23); as to Gantkessy, Hivick testified "I don't know who Andrew Gantkessy is." (App.554, pg.39). Hivick also participated in the

matters concerning the box of Rasmark records seized from D. Rasmusson on May 23, 1992; Hivick testified she only saw no evidence of tax evasion, (App.557, pg.41). Federal Bureau of Investigation ("FBI") SA Joe Acosta ("Acosta") also reviewed the documents in the seized box and testified that he saw only normal business records, (App.762-762).

In further support of the petitioners contention of a bogus investigation, the petitioners submitted to the district court documentation of unlawful disclosures and coercion: to M. Rasmusson's ex-wife and her attorney at App.1292-1294; subpoenas to the Rasmussons and Rasmark's banks, App.671, L14 - App.672, pg.39); to the Ford Motor Company ("Ford"), Rasmark's major customer and Gantkessy's employer, at App.1297-1306; and affidavits of Rasmark employees, and/or former employees, and/or business associates, and/or Rasmussons' friends, and/or family: Andrea, App.333-334; Apodaca (Rasmark's accountant), App.335-337; Barron, App.337a-337b; Burnett, App.338-343; Chavez, App.344-346; Enriquez, App.347-349; Farah, 349a-349b; Gorman, App349c-349d; Jackson, App.350-352; Joseph, App.353-355; Ian Maye (D.Rasmusson's in May 23, 1992 incident), App.356-358; Parra, App.358a-358b; Quarles, App.359, Interview of Varela, App.359a-359b; Sambrano, App.359c-359d; Vargas, App.360-361; Interview of Vasquez, App.362-363; Vaughn (concerning USCS refusal to return records seized on November 22, 1993), App.365-367; and Yarber, App.368.

In further support of the petitioners contention of a bogus investigation, the petitioners submitted to the district court representative documentation of unreasonable searches and seizures: incidents occurring as early as 1987 (App.1150, ¶ 1 "We have been delayed for over 2 years by US Customs at El Paso with searches by dog, strip searches, taking the airplane apart, searches of all personal belongings, being rude and uncourteous, even pointing machine guns at us with my wife and son on board"); October 7, 1988 incident non international flight, at App.341-342, ¶ 5); summer of 1990 another non border incident, App.342,¶ 6; 1990 "Teddy Bear" incident, at App.259, ¶ 12; May 23, 1992 incident and prior history at App.296, ¶ 13-29;

November 10, 1992 incident at border where D. Rasmusson arrested for alleged switchblade knife and her car seized for alleged .1 gram of marijuana, at App.307, ¶ 30-32; Frost denied he had anything to do with the seizure of her car at App.960, ¶ 45; and also see, Frost's signature on USCS Custody Receipt For Retained or Seized Property dated November 10, 1992 at App.1295-1296; more unlawful searches of aircraft on domestic flights at App.350-351 and September 1, 1993 at App.352; numerous unlawful alleged trash pick ups repeatedly finding important Rasmark records at App.933, ¶ 82-86; 935, ¶ 89; 936, ¶ 92; 937, ¶ 102; 938, ¶ 103-106; and 940, ¶ 109-114; State respondent Neil Baker ("Baker") testified he participated in numerous trash pickups at App.863-872 and numerous surveillances at App.886-889; State respondent James Holland ("Holland") participated in surveillance activities at App.622-624. Respondent George Salas denies being an undercover operative and that he never had the Rasmussons residence and office keys (App.487, pg.38); however, Salas impeached himself later at App.514, pg.79 - App.515, L19.

In further support, petitioners submitted to the district court documentation of unlawful interrogation and coercion of petitioner Gantkessy at App.314-332; 348, ¶ 7; 1478, ¶ 8-10; 1480-1485.

In further support of the petitioners' contention of a bogus investigation, the petitioners submitted to the district court documentation corroborating the fact that the respondents knew for a certainty that neither Rasmussons, Rasmark nor Gantkessy were participating any type of kickback or payoff scheme, yet the respondents placed the false allegations in the November 19, 1993 affidavits. Respondent Acosta testified that he subpoenaed all Ford's records relating to Rasmark, in January of 1993, (App.708, pg.84-86 and1297-1298), and he received the records in about three months later (App.710, L19-23); the purpose, according to Acosta, was to get some idea of the volume of business in relation to money generated and found there was no big difference between the numbers, (App.716-719, L17). Acosta further testified that he was not aware of anyone from the USCS having to be present to assist Ford in complying with the subpoena (App.712-714, L2), contrary to Frost's declaration at App.950, ¶ 11. And further

documentation submitted was the basis of the respondents allegations of kickback and/or payoff schemes between the Rasmussons, Rasmark and Gantkessy, to steal money from Ford through the U. S. Mail service. See App.1320-1322. Respondent Gail Beach ("Beach") and Chris Hines ("Hines") were responsible for fueling the rumormongering mill (App.1307-1318); however, Beach testified that she told Frost her information was based largely on rumors (App.903) and denied she told Frost that the Rasmussons were engaged in a "kick back" scheme with Joe Sudomir and Andy Gantkessy, (App.1049, Admission No.5). Likewise Hines denies he told respondent USCS SA Fred Schroeder ("Schroeder") and EPPD officer James Holland ("Holland") that he believed money was going to Andy Gantkessy (App.1061, Admissions No. 6). Hines further denies he told the same respondents that D. Rasmusson said she owed Gantkessy some money but could not put his name on the check, (App.1062, Admission No.12); further denials by Hines at App.1063.

In further support of the petitioners' contention of a bogus investigation, the petitioners presented to the district court documentation of the respondents' knowledge that they knew the basis of the Rasmusson's lifestyle from the divorce papers, which Frost cites in his affidavit at App.944, ¶ 119, and that the respondents knew the divorce court had appointed a receiver over all Rasmark's bank accounts, App.1332-1339, controlling the Rasmussons' salaries and expenses.

In further support of the petitioners' contention of a bogus investigation, the petitioners submitted to the district court that after the respondents had executed their unlawful search warrant, seizing all of Rasmark business records, including FAA required maintenance records, and all of their personal and business records at D. Rasmusson's residence on Leo Collins Road in El Paso, the USCS refused to return the records, after repeated request from Rasmark, only a few of the records were reluctantly returned, culminating in the Rasmussons and Rasmark filing a motion for return of property in April of 1995 and finally getting over 65 boxes of records returned in May of 1995. See App.1341-1351.

In further support of the petitioners' contention of a bogus investigation, the petitioners submitted to the district court documentation showing the respondents failed to follow reasonable policies and procedures that the respective respondent agencies had agreed to follow, unless the particular agency's policies were more restrictive, (App.1127-1136); including case preparation/HIDTA at App.1136-37; and the Financial Disruption Unit handbook at App.1137-1141. The state respondents testified that they were not required to keep their home agency supervisors informed, that their supervisors understood they could not talk about their task force work: Salas at App.480-482; 502-504; concerning the May 23, 1992 incident which Salas set up for the other respondents, App.505, pg.65 - App.514, L25; neither was Salas required to report the May 23, 1992 incident to his supervisor, pg.86, L2- pg.87, L20; also, pg.32, L10-25; pg.46, L4-18; (Record, Salas January 10, 1997 Depo). Holland: his immediate supervisor at EPPD at pg.11, L9-23; regarding discussions with his supervisor, where Holland testified that he could not discuss entirely what he was doing on the task force because it was understood that he was dealing with Grand Jury material and that his supervisor was not part of the investigation; and that USCS SA Frost had ultimate control see pg.13-16, L10; even though EPPD was a partner in the previous DEA OCDETF investigation against Flores and M. Rasmusson, Holland did not review EPPD files, although he knows the officers who were involved; see pg. 16, L20 - pg.20, L10; and more of similar import. Respondent Neil Baker ("Baker") of the El Paso County Sheriff's Department ("EPSD") testified his immediate EPSD supervisor was Lt. Gabbert but USCS SA respondent Schroeder supervised during task force tasks, (App.842-851, pg.23, L2); Baker also testified to pressure he felt and conflict between his supervisor and the task force, and instructions from Lt. Gabbert "were suggestions. . . ." (pg.67, L8- pg. 73, L8); and other testimony of similar import.

Finally, the petitioners submitted to the district court documentation that the Rasmussons and Rasmark were a growing business known for its quality service and reasonable cost and a good corporate citizen participating in the community at large, which were the reasons for Rasmark's success and the unyielding bitterness of

respondent Gail Beach ("Beach"). See App.1323-1131).

Because of the foregoing continuing violations, the Petitioners M. Rasmusson first filed a timely claim with the Respondents respective Federal agencies on or about June 12, 1995 and received a final response dated January 16, 1996 (App.120a-120c). However, before receiving the response, the Petitioners filed their lawsuit in the District Court for the Western District of Texas on November 21, 1995.

After the Petitioners agreed to numerous extensions of time for the Respondents to file their answers and/or motions, and the Petitioners filed requests for discovery and various motions to strike portions of certain Respondents' affidavits, the District Court held its first hearing to ascertain status of case and set discovery guidelines. The district court's Scheduling Order (App.100) severely restricted the Petitioners to only twelve depositions with a time limit of two hours each and limited to the precise issue of qualified immunity, although the Petitioners' original complaint named over 30 identified participants in the investigation against the Petitioners, causing the Petitioners to lose access to potential direct evidence of the unlawful investigation. The district court's order regarding plaintiffs' production request for qualified immunity (App.102) also severely restricted the Petitioners from obtaining access to direct evidence of the Respondents fabrications and misuse of government funds to support their unlawful investigation against the Petitioners. See Petitioners' request at App.1487.

After the initial Petitioners were joined in the lawsuit by D. Rasmusson and Gantkessy in May of 1996, the district court further denied the Petitioners the opportunity to add the USCS as a party to their Third Amended Complaint. See order at App.106 and order on reconsideration at App.111; see also, Petitioners' motion for reconsideration of the district court's denial to add the USCS at App.1502.

The Petitioners filed objections to the district court permitting the substitution of the United States for the federal Respondents and reconsideration of the court's final order (App.115); the Petitioners

further objected to the court's denial of the plaintiffs motion to compel production of all records that are defendants' basis of good faith for objections to deposition questions or in the alternative, for in camera review (App.117); Petitioners' motion at App.1521. Once it became apparent the district court's repeated negative rulings against the Petitioners in face of overwhelming factual evidence showing the unlawfulness of the Respondents' conduct, the Petitioners filed a motion for leave to file plaintiffs' motion to stay proceedings until such time as Chief Judge Hudspeth has reviewed plaintiffs' motion to (1) strike evidence (2) transfer the matter as a connected case to Chief Judge Hudspeth's Docket, or in the alternative (3) to allow plaintiffs to amend their witness list and offer additional evidence on the issue of qualified immunity; see App.1518. The district court initially denied the plaintiffs' motion in a summarily fashion in its order rendered on the same date of the summary judgment (App.96, ¶24), although the Petitioners requested hearings on at least two occasions (App.1514-17). And finally, the district court denied the Petitioners motion for a new trial (App.1553) treated as a motion to alter or amend judgment (App.119-20).

The present lawsuit is an outgrowth of nearly eight years of continuing constitutional violations against the petitioners, who felt compelled, after years of fear and inability to get the respondents to cease, filed their original petition on November 21, 1995, against over thirty identified participants, culminating in the third amended original petitioner being filed on March 14, 1997. The petitioners explicitly stated in the caption that the USCS is "sued under the Privacy Act only" (App.121-122; and further stated the respondents were being sued in their respective individual capacity for violating rights protected by the First, Fourth, Fifth Amendments, as to federal respondents, and Fourteenth Amendments, as to state respondents. (App.1-23). At the time of filing the original petitioner, the key affidavits of November 19, 1993, were sealed, and had been since their issuance. The affidavits were not unsealed until April of 1996, pursuant to an agreement between the parties allowing the respondents another extension of time. The respondents filed their respective motions to dismiss and in the alternative, summary judgment based on qualified immunity and statute

of limitations. The federal respondents attached their respective declarations and the state, their affidavits. The petitioners filed numerous motions to strike portions of specific affidavits; all motions denied by the court. In a status conference held on August 8, 1996, the district court specifically instructed the petitioners that only the issue of qualified immunity is to be considered in the twelve depositions being allowed, with each deposition not to exceed two hours in length. (App.100-101). The court specifically stated that "I'll let the attorney representing the witness being deposed ask clarifying and follow up questions. All other attorneys are going to be very limited in any questions they can ask a witness. Because this is not a general discovery deposition." (Supp.Record on Appeal, pg. 61). Pursuant to the status conference, the petitioners submitted their production request on the issue of qualified immunity. (App.1487-1501). The district court severely restricted the petitioners' production request, (App.102-105),denying petitioners access to direct evidence on material issue of the lawfulness of the respondents' investigation from the beginning. The petitioners have filed various 56(f) motions, in particular, regarding the private respondents; all motions denied. The net effect of the district court's severe restrictions was to prevent the petitioners from access to probative evidence on material issues of fact where such evidence was in the sole possession of the respondents. During the depositions, the respondents consistently used evasive and obstructive tactics, raising objections such as "ongoing investigation", "investigative technique", "grand jury material", "irrelevant to qualified immunity", confidentiality, and "confidential informant information", resulting the petitioners motion to compel production of all records that are defendants' basis of good faith before the court and basis for objections to deposition questions or in the alternative, produce for in camera review. (App.1521-1539); the district court denied the initial and reconsideration motions. (App.117-118). Based on new information obtained upon petitioner Gantkessy joining the lawsuit, the petitioners filed their motions to add the USCS as a party-defendant, pursuant to the Privacy Act. (App.1502-1513); the district court denied all motions. (App.106-109; 111-114).. The federal respondents filed motions to substitute the United States upon certification; initially denied but later granted; however, the district court denied the petitioners an hearing or

motion for reconsideration, (App.110; 115-116). In the court's summary judgment ruling, the court characterized all claims against the respondents as common law tort and stated all claims against federal respondents only cognizable under the Federal Tort Claims Act (FTCA) and ruled that the record was devoid of any evidence that the plaintiffs filed their claims with the respective agencies, (App.41, ¶ 48; App.46, ¶ 52); however, the plaintiffs were suing under the Bivens Doctrine and were not given an opportunity to present evidence of the filing of their claims, for which all respondent agencies responded, (App.120a-120c). Besides the district court making voluminous factual rulings contrary to the record, key rulings of law were made: (1) that none of the petitioners stated a cognizable action, (App.5, ¶ 1); (2) corporate plaintiff Rasmark cannot maintain a claim under either Bivens or § 1983, and all of its claims, and other petitioners, lie under the FTCA, (App.7, ¶ 7 and App.41-47); and that petitioners failed to carry their burden of proof on the "scope of employment" issue, that the court finds all federal defendants sued in tort were acting witin the course and scope of their employment, (App.44, ¶ 50);(3) Gantkessy failed to state claim under either the First Amendment or any other provision of the constitution or federal law, (App.7, ¶ 8); (4) the district court blatant misrepresented petitioners' allegations of conspiracy as being under § 1985 (App.9, ¶ 11) is not mentioned any where in the petitioners' pleadings; but rather, the petitioners raised conspiracy allegations under § 1983 and Bivens (App.249, ¶ 484), and state law claims, (App.124, ¶ 5;-6; 225, ¶ 399; 236, ¶ 432; 242, ¶ 454; 244, ¶ 464; and under Privacy Act at App.246-249; (5) that all motion to dismiss will be construed as motions for summary judgment; (6) having considered all motions, oral argument and relevant case law, the court is of the opinion that no genuine issues of material fact exist as to any of the claims asserted and that all named defendants are entitled to summary judgment as a matter of law. (App.9, ¶ 12). Out of the district court's detailed discussion of much law and 239 citations, the court somehow failed to mention the petitioners' continuing violation allegations and applicable law. The district court, however, did find that the rights alleged by the petitioners were clearly established constitutional rights, the only issue being whether any of the respondents violated such rights. (App.15, ¶ 19). The court further ruled that the private respondents cannot assert

qualified immunity, (App.15, ¶20); however, the court ruled they were entitled to privilege under 19 U.S.C. § 507(b), for providing information to USCS agents in the course of an investigation, (App.75, § 93-95). The district court further ruled: (1) that the petitioners only sought to carry their burden by showing that some other law enforcement officer, in the shoes of one of the defendants, would have acted differently, (App.19, ¶ 25); that in an effort to avert the statute of limitations bar on a majority of petitioners' claims, the petitioners assert conspiracy, (App.38, ¶ 43), and ruled petitioners' claims against all defendants, except those who participated in the execution of the November 22, 1993 search warrants were untimely, (App.41, ¶47). Although the petitioners presented expert witness affidavits from three retired supervisory level FBI and IRS Special Agents, (Appendix G, App. 1373-1472), in addition to the petitioners' and other supporting affidavits, (Appendix C, App.256-368), the district court ruled it could find no material issues of fact to be tried by a jury. See also, Appendix F, App.1142-1372, for references cited in the foregoing affidavits and other supporting documentation cited elsewhere in the writ.

By time the Petitioners filed their notice of appeal to the Fifth Circuit Court of Appeals, approximately 287 items were listed as entries in the record, which the Petitioners incorporate herein as though each and every item is fully set forth for the Court's review. Petitioners contend, however, that many of the district court's rulings upheld by the Fifth Circuit severely denied Petitioners' due process rights.

REASONS FOR GRANTING THE WRIT

I.

The Court Of Appeals Has Decided An Important Federal Question In A Way That Conflicts With Relevant Decisions Of This Court And In The Alternative, The Court of Appeals Has Sanctioned Such A Departure From The Accepted And Usual Course Of Judicial Proceedings As To Call For An Exercise Of This Court's Supervisory Power, By

Summarily Affirming The District Court's Granting Of Summary Judgment On The Issue Of Qualified Immunity To Both State, Federal Respondents Officers And Private Respondents, Despite Substantial Issues Of Material Facts Concerning Officers And Private Parties' Improper Motives And Denying Access To Court, Contrary To Relevant Decisions Of This Court.

In recent years, this Court has established sufficient guidelines for federal courts to follow in determining the issue of qualified immunity on a summary judgment motion. *Crawford v. Britton,* 523 U.S. 574, 118 S.Ct. 1584 (1998); *Harlow v. Fitzgerald,* 457 U.S. 800 (1982); *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986); *Anderson v. Creighton,* 483 U.S. 635 (1987); *Anderson v. Liberty Lobby,* 477 U.S. 242 (1986) and others. The present case represents a blatant and startling departure from clear precedent. The intent of this Court's precedent concerning qualified immunity doctrine is to limit officials' exposure to such litigation in order to advance three policy considerations. First, the Court fears that it would be unfair to require public officials to compensate plaintiffs for all constitutional violations, given the sometimes unclear nature of constitutional law. *Wood v. Strickland,* 420 U.S. 308, 319-22 (1975). Second, the Court speculates that public officials will be overdeterred in the performance of their duties if they anticipate that every official action they take may lead to a lawsuit. *Harlow,* at 806-807. Finally, the Court believes that the litigation of constitutional may impose substantial costs on individual officials and on the government itself, even when the trial court ultimately finds that the officials are not liable. *Id.* at 814. However, the reasoning in the present case shows little resemblance to what this Court intended in the foregoing precedent.

This Court understood the struggle within the circuits over the issue of improper motive and the surrounding factual issues. Only recently did the Court issue its opinion in which it set forth ". . .a correct understanding of the relationship between . . . *Harlow* . . .and the plaintiff's burden when his or her entitlement to relief depends on proof

of an improper motive." *Crawford* at 1590. In the present case, improper motive and/or improper purpose is the basis of the petitioners' entire lawsuit. In this context, the court of appeals upholding the district court's ruling on the set of facts and evidence adduced before the district court is simply baffling. A question that surfaces is whether the district court was engaging in a genuine struggle over whether it was dealing with insubstantial claims. An affirmative answer might have some validity if the petitioners had not submitted significant probative evidence corroborating their contention that the respondents were engaging in a bogus investigation ad initio. Moreover, the district court's reasoning and factual rulings, those that are discernible and accurately reflect the record, might well implicate procedural due process concerns.

If the policy is for the federal courts to give the public officials a head start, in the present case, the court of appeals has given the entire game without the respondents ever having to appear. If all federal courts follow in the footsteps of the Fifth Circuit, important constitutional rights will be obliterated completely. The net effect of the court of appeals upholding the district court was to grant these respondents absolute immunity, contrary to this Court's precedents. See, *Butz v. Economou,* 438 U.S. 478 (1978) and the President, *Nixon v. Fitzgerald,* 457 U.S. 731 (1982). Under *Harlow,* this Court reiterated its admonishment "that 'insubstantial' suits against high public officials should not be allowed to proceed to trial." See *Harlow v. Fitzgerald,* 457 U.S. 800, 820 (1982). Just a cursory review of the petitioners' third amended original petition exposes the seemingly limitless flaws in the district court's-95-pages-239- citations ruling.

In its zeal to protect public officials, the district court failed to apply the objective reasonableness standard to the respondents' conduct. In fact, the district court states in its opinion that "[b]ecause the Plaintiffs have failed to establish the existence of a constitutional violation, Defendants who participated in the investigation are entitled to qualified immunity without the need for the court to determine whether Defendants' actions were objectively reasonable." See App.56, ¶ 63. The district court does not merely misstate the *Harlow* standard,

it completely eviscerates *Harlow* beyond recognition. Here, the Petitioners have been trying to get answers since 1989, and instead, they were further demeaned by the court. No person within the borders of the U.S. Constitution deserves that type of contempt from any court when the entire purpose of the court is to redress just the type grievances presented by the petitioners. The Rasmussons felt real pain and fear in 1989 when they were humiliated at the border (TAOP at App.133); their employees felt real fear for their lives when confronted with agents raiding the petitioners' aircraft with "machine guns, pistols and shotguns" (TAOP at App.133, ¶ 35-43); D. Rasmusson and her son felt real pain and fear when they were followed to a convenience store, literally attacked by the respondents who stole petitioner's Rasmark records from her, and physically attacked she and her son (TAOP at App.179, ¶ 224); and Gantkessy felt real pain and fear, thinking he was about to have another heart attack, be dragged out of his office like a common criminal, when these respondents showed up at his office unannounced and proceeded to interrogate and threaten him until he finally agreed to anything they said just to get from under that unbearable coercion (TAOP at App.205, ¶ 312-320). Are these examples of the type of "insubstantial claims" contemplated by *Harlow*?

While the public interest cries for an answer to "insubstantial" suits against high public officials, the Constitution equally cries for protection of not just your "hypothetical innocent" but the "true" innocent, such as the petitioners before this Court.

A. The Court Of Appeals In Upholding Ruling Of District Court's Granting Of Summary Judgment To All Respondents Based On Statute Of Limitations When District Court Completely Failed To Address The Petitioners' Allegations Of Continuing Constitutional Violations As Tolling Provisions Under State Law, Contrary To *Wilson v. Garcia*, 471 U.S. 261 (1985).

This Court settled the limitations issue with regard to § 1983 and Bivens claims with its holding that "[o]nly the length of the

limitations period, and closely related questions of tolling and application, are to be governed by state law." *Wilson*, at 269. However, the facts before the *Wilson's* Court did not include allegations of continuing constitutional violations, as in the present case. Texas courts have ably addressed the issues surrounding limitations in the summary judgment context. "A party moving for summary judgment on the basis of limitations must conclusively establish the bar of limitations." See, *Jennings v. Burgess,* 917 S.W.2d 790, 793 (1996), citing *Delgado v. Burns,* 656 S.W.2d 428, 429 (Tex.1983). Furthermore, "[i]f the nonmovant asserts that a tolling provision applies, the movant must conclusively negate the tolling provision's application to show his entitlement to summary judgment." See, *Jennings* at 793, citing *Zale Corp.,* 520 S.W.2d at 891; *Woods v. William M. Mercer, Inc.,* 769 S.W.2d 515, 518 n.2 (Tex.1989). In the present case, the district court only addressed the issue of a conspiracy in its ruling (App.37-41) and never mentioned the issue of continuing violation. Only the federal respondents attempted to address the issue, who stated that "no court to date has accepted this theory [continuing violation theory] in the context of the due process claims." See (Appellees' Brf. At 15, record below). The respondents completely overlook the holding in *Wilson*–that state law determines the applicability of tolling provisions. Has the position of this Court changed?

B. The Court Of Appeals' Decision In Upholding The District Court's Ruling That Affidavits Given Subsequent To The Filing Of Petitioners' Lawsuit By Witnesses Interviewed Years Earlier By One Or More of the respondents, And/or Respondents' Respective Agencies, Regarding Same Matters That Were Subject Of Earlier Interviews Are Irrelevant In The Present Lawsuit To Challenge The Validity Of The Affidavits That Were Used By The Respondents To Obtain Search Warrants, Where The Witnesses Affied They Did Not Make The Alleged Statements In The Earlier Interviews That Are Attributed To Them Or The Alleged Statements Are Either Substantial Misstatements

and/or False, Thereby Violating The Petitioners' Fourth Amendments Rights To Be Free From Unreasonable Searches And Seizures And The Petitioners', Contrary To *Franks v. Delaware,* 438 U.S. 154 (1978) And Other Relevant Cases.

Something is quite baffling about the district court's reasoning that strikes at the heart of fundamental fairness; (App.91, ¶ 114). It is okay for the respondents to reach back to the old Flores case, which was ruled wholly insufficient against petitioner M. Rasmusson, which the Government lost years earlier; retrieve staled facts that were fully prosecuted, or should be deemed fully prosecuted; misstate and misrepresent the staled facts, fabricate new facts that did not even occur in the old case; misstate and misrepresent historical facts about the petitioners, when accurate facts are easily accessible to the respondents in the Government's system of records; pretend to be investigating the petitioners-- writing bogus surveillance reports with absolutely no corroboration, accepting incriminating rumors and/or hearsay with absolutely no corroboration from alleged confidential informants, some of whom were just bitter competitors, and others likely bogus; intentionally and knowingly disclose highly inflammatory false information to petitioners friends, family, bankers, employer and business customers; find voluminous important business documents repeatedly in the trash; accost and attack the petitioners wherever and whenever desired by the respondents; use creative writing to connect and interconnect the old case to the newly fabricated appearance of a case, placed all this in affidavits, and take it to an unsuspecting Magistrate who must make a detached and neutral determination based, unknowingly, on a pack of lies. The district court's reasoning robs a *Illinois v. Gates*, 103 S. Ct. 2317 (1983); *Franks v. Delaware,* 438 U.S. 154 (1978); *Ashe v. Swenson,* 397 U.S. 436 (1970); and *Harlow*, supra, of any meaningful vitality.

C. The Court Of Appeals' Decision In Upholding The District Court's Ruling That The Petitioners' Third Amended Original Petition Does Not Contain Any Kind Of Cognizable Action, And/Or Failure To

State A Claim Under Any Provision Of The Constitution Or Federal Law, Where The Petitioners State Their Claims With Particularity, Decides An Important Question Of Federal Law Concerning Whether Heightening Pleading Requirement Will Replace Notice Pleading In § 1983 And *Bivens* Claims, An Issue That Has Not Been, But Should Be, Settled By This Court.

Traditionally, federal courts have required specificity in pleading, or heightened pleading, of plaintiffs bringing civil rights actions under 42 U.S.C.S. § 1873. In 1993 this Court ruled that heightened pleading was not to be applied in civil rights cases against municipalities, that the heightened standard was inapposite to the liberal system of "notice pleading" set up by the Federal Rules. *Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit,* 113 S. Ct. 1160, 1163 (1993). However, it is not clear whether this Court meant that heightening pleading is not to be applied in cases only against municipal corporations or also not to be applied against officials in their individual capacities. If this Court's silence on the individual officials was by implication approval of the heightened standard, how high must the plaintiff reach to meet the standard, in light of the voluminous material details the present petitioners submitted, and found by the Fifth Circuit itself, to be deficient?

II.

The Court Of Appeals Has Decided An Important Federal Question That The Conduct Of Government Agents In Originating A Criminal Design, Implanting In An Innocent Person's Mind, While Playing On The Innocent Person's Fears, The Disposition To Believe That Certain Criminal Activities Are Being Carried On, And Attempting To Induce That Person To Assist The Agents In Fabricating A Criminal Nexus For The Expressed Purpose Of Using That Fabricated Criminal Nexus

Against An Investigatory Target Who Is Not Engaging, Has Not Engaged Or Shown Any Reasonable Indication That He Is Likely To Engage In Illegal Activity Of A Similar Type Being Planted In The Mind Of The Innocent Person And Where There Is No Legitimate Ongoing Sting Operation, Resulting In Continuing Unreasonable Searches And Seizures And Unlawful Disclosures To Non Law Enforcement Third Parties, Resulting In Loss Of Liberty And Property, Constitutes An Abuse Of Government Power Within The Meaning Of The Fourth, Fifth and Fourteenth Amendments, An Issue That Has Not Been, But Should Be, Settled By This Court?

Here the Court must travel through murky legal waters concerning the sanctity of law enforcement investigations. The parameters surrounding investigations have become so broad that the innocent person stands defenseless when faced with the formidable law enforcement industry, where local, state and federal agencies, including prosecutors assigned specifically to the task forces, are combined in each other's task forces, with little or no accountability to anybody, not even their own supervisors. This Court has long expressed its admonitions against investigatory conduct that amount to gross abuse of authority. *Sorrell v. United States*, 287 U.S. 435, 441 (1932), in the entrapment line of cases. Understandably, law enforcement need to keep pace with the criminal, in the present case, the respondents overstepped the line between setting a trap for the 'unwary innocent' and the "unwary criminal"; these respondents knew from the beginning they were dealing with the "unwary innocent" [*Sherman v. United States,* 356 U.S. 369, 372 (1958)], their ultimate goal was to destroy the petitioners for having compared their conduct to "Nazi Gestapo tactics" to Congressional leaders. Unlike the entrapment line of cases where the Court considered the issue of predisposition to commit a certain crime, *Jacobson v. United States,* 503 U.S. 540, 542 (1992), the innocent person invites no law enforcement scrutiny. The present respondents used the pretext of the DEA OCDETF investigation concerning a known

criminal Flores against the petitioners Rasmussons and Rasmark simply because the respondents knew how to hide their true purpose; for if this was not so, the Government certainly should have prosecuted all of the other legitimate businesses who provided services to Flores and who were paid in cash. The only difference between the petitioners and the other legitimate business was the fact that the petitioners exercised their fundamental constitutional right to protest what they perceived as bad government conduct. In *United States v. Russell,* 411 U.S. 423, 431 (1973), this Court stated that some day it may "be presented with a situation in which the conduct of law enforcement agents is so outrageous that due process principles would absolutely bar the government from invoking judicial process to obtain a conviction." These petitioners stand before this Court without a shred of protection, except for the hope that lies in *Russell.* Is this such an occasion for this Court to place some parameters on investigation as falling either within Fourth Amendment protection at an earlier stage than probable cause, or as an abuse of governmental power under the Fifth Amendment?

III.

The Court Of Appeals Has Decided An Important Federal Question In Upholding The District Court's Ruling That Conduct Of Respondent Agents and Private Parties, Where The Agents Solicited Rumors And/Or False Information From Private Parties Who In Term Intentionally And Knowingly Related Rumors And/Or False Information To Agents; Where Respondent Agents Placed In Their Affidavits And The Government's System Of Records, Voluminous Misstatements, Misrepresentations, False Statements And Fabrications Material To Probable Cause And Other Just Outright Inflammatory And Vicious; Where Supervisors, Prosecutors, And /Or Assistant U.S. Attorneys, Intentionally And Knowingly Approve, Condone, Ratify, Or Acquiesce To Respondents' Misconduct, All For

Expressed Purpose Of Causing Petitioners To Be Subjected To Unreasonable Searches And Seizures And For Expressed Purpose Of Making Unlawful Disclosures To Non-Law Enforcement Third Parties, Where No Extant Criminal Nexus, Thereby Resulting In Loss Of Liberty And Property, Constitute Fourth, Fifth And Fourteenth Amendment Violations, Contrary To *Bryson v. United States,* 396 U.S. 64 (1969); *United States v. Wong*, 431 U.S. 174 (1977); *La Chance v. Erickson,* 522 U.S. 262 (1998), And Other Relevant Cases.

The court of appeals has effectively eviscerated this Court's holdings that falsehoods will not be tolerated. In *Bryson*, the Court said: "Our legal system provides methods for challenging the Government's right to ask questions–lying is not one of them. A citizen may decline to answer the question, or answer it honestly, but he cannot with impunity knowingly and willfully answer with a falsehood." *Bryson* at 72. This Court expects no more of the respondents than from all other persons before any court. While a criminal defendant has a right to testify, that right does not include the right to commit perjury, *Nix v. Whiteside,* 475 U.S. 157, 173 (1986); neither do witnesses appearing before grand jury. This Court's position is clear that "the predicament of being forced to choose between incriminatory truth and falsehood . . . does not justify perjury." *United States v. Wong,* 431 U.S. 174 (1977). In the present case, the respondents' lying has defeated the petitioners' right to redress for grievous wrongs. Are the respondents to be protected from their intentional and knowing conduct when they lied in affidavits, declarations and depositions, all conflicting internally and with each other? If the President of these United States cannot lie, even about his most personal and intimate life, neither should the respondents-subordinates be permitted to lie about continuing constitutional violations concerning fundamental rights committed against the innocent petitioners.

IV.

The Court Of Appeals Has Decided An Important Federal Question In Upholding The District Court's Ruling Denying The Plaintiffs' Motion To Stay Proceedings Until Such Time As Prior District Court Judge, Who Has Unique Knowledge Of His Personal Subjective Thoughts Behind Rulings Which Effectively Invalidated Or Discredited Evidence Adduced In Criminal Trial And Now is Being Asserted By Respondents, Has Reviewed Plaintiffs' Motion To (1) Strike Evidence (2) Transfer Matter As A Connected Case To Prior District Court Judge's Docket, Or In The Alternative, (3) To Allow Plaintiffs To Amend Their Witness List And Offer Additional Evidence On Issue Of Qualified Immunity Constitutes Denial Of Procedural Due Process Under Fifth And Fourteenth Amendments So As To Restrict Plaintiffs' Access To Court, An Issue That Has Not Been, But Should Be, Settled By This Court?

Underpinning the petitioners' question is whether the respondents had been successful in their scheme and subjected M. Rasmusson to a new criminal trial using the same facts from the previous trial, in which he received a judgment of acquittal, would such ruling of the district court implicate Double Jeopardy Clause issues? Likewise, the respondents having failed in advancing their scheme, and in the present lawsuit where the district court blatantly disregards plain facts, the petitioners realizing that the appearance of prejudice is a reality, thus seek to have the case transferred to the very judge who has unique knowledge of his personal subjective thoughts behind his rulings which effectively invalidated or discredited evidence adduced in the criminal trial and now being asserted by the respondents, which motion is denied, does such denial implicate procedural due process in the same manner as double jeopardy? Clearly, if the respondents had succeeded, in the words of this Court in *Green v. United States,* 355 U.S. 184 (1957), the results are unavoidable, namely: "thereby subjecting [the petitioners] to embarrassment, expense and ordeal and compelling [the

petitioners] to embarrassment, expense and ordeal and compelling [the petitioners] to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent [the petitioners] may be found guilty. *Id.* at 187-188. A review of the petitioners' affidavits corroborates this Court's prophetic words spoken over a quarter of a century before the events in question. This Court addressed the meaning of the judgment of acquittal and instructed the Fifth Circuit Court of Appeals and other lower courts that they "must determine whether the ruling of the judge, whatever its label, actually represents a resolution, correct or not, of some or all of the factual elements of the offense charged." *United States v. Martin Linen Supply co.*, 430 U.S. 564, 571 (1977). In the present case, the Honorable Judge Hudspeth took the time and detailed the elements of Count Nine before he ruled "there's not sufficient proof . . ." and that "suspicion, of course, is not enough." (App. 1288-1289) Under the facts of the present lawsuit, a writ should issue to decide in the civil context the interplay of the petitioners' motion and due process.

CONCLUSION

History and modern day civil wars teach us that when the Government closes its eyes to its own abuses and expects the citizenry, such as the petitioners, to accept in silence, like a child, then we all must braced ourselves for sudden and unexpected rebellious outcry. The petitioners pray that this Court grants the writ of certiorari, thereby restoring some measure of trust and balance, once again, between "we the people of these United States" and our public servants, and in particular, restoring some measure of trust and hope in the petitioners that our courts are here for the purpose of ensuring justice for all.

DATED: February 8, 1999

Respectfully submitted,

SHEPPARD & ASSOCIATES

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ADDENDUM TO

APPENDIX H
SUPPLEMENTAL APPENDIX

REPLACEMENT TO

APPENDIX B

PUBLISHER'S NOTE :

ORIGINAL PAGINATION IS NOT CONTINUOUS.

EXCERPTS FROM THE PRIVACY ACT, 5 U.S.C. §

. . . **(b) Conditions of disclosure.** No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be--

(1) to those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties;

(2) required under section 552 of this title;

(3) for a routine use as defined in subsection (a)(7) of this section and described under subsection (e)(4)(D) of this section;

(4) to the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13;

(5) to a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(6) to the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist of the United States or the designee of the Archivist to determine whether the record has such value;

(7) to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the

particular portion desired and the law enforcement activity for which the record is sought;

(8) to a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(9) to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(10) to the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office;

(11) pursuant to the order of a court of competent jurisdiction; or

(12) to a consumer reporting agency in accordance with section 3711(e) of title 31. . . .

. . . **(e) Agency requirements**. Each agency that maintains a system of records shall--

(1) maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or by executive order of the President;

(2) collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs;

(3) inform each individual whom it asks to supply information, on the form which it uses to collect the information or on a separate form that can be retained by the individual--

(A) the authority (whether granted by statute, or by executive order of the President) which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary;

(B) the principal purpose or purposes for which the information is intended to be used;

(C) the routine uses which may be made of the information, as published pursuant to paragraph (4)(D) of this subsection; and

(D) the effects on him, if any, of not providing all or any party of the requested information;

(4) subject to the provisions of paragraph (11) of this subsection, publish in the Federal Register upon establishment or revision a notice of the existence and character of the system of records, which notice shall include–

(A) the name and location of the system;

(B) the categories of individuals on whom records are maintained in the system;

(C) the categories of records maintained in the system;

(D) each routine use of the records contained in the system, including the categories of users and the purpose of such use;

(E) the policies and practices of the agency regarding storage, retrievability, access controls, retention, and disposal of the records;

(F) the title and business address of the agency official who is responsible for the system of records;

(G) the agency procedures whereby an individual can be notified at his request if the system of records contains a record pertaining to him;

(H) the agency procedures whereby an individual can be notified at

his request how he can gain access to any record pertaining to him contained in the system of records, and how he can contest its content; and

(I) the categories of sources or records in the system;

(5) maintain all records which are used by the agency in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination;

(6) prior to disseminating any record about an individual to any person other than an agency, unless the dissemination is made pursuant to subsection (b)(2) of this section, make reasonable efforts to assure that such records are accurate, complete, timely, and relevant for agency purposes;

(7) maintain no record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity;

(8) make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record;

(9) establish rules of conduct for persons involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record, and instruct each such person with respect to such rules and the requirements of this section, including any other rules and procedures adopted pursuant to this section and the penalties for noncompliance;

(10) establish appropriate administrative, technical, and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment,

inconvenience, or unfairness to any individual on whom information is maintained;

(11) at least 30 days prior to publication of information under paragraph (4)(D) of this subsection, publish in the Federal Register notice of any new use or intended use of the information in the system, and provide an opportunity for interested persons to submit written data, views, or arguments to the agency; and

(12) [Caution: For effective date, see 1988 Amendment note] if such agency is a recipient agency or a source agency in a matching program with a non-Federal agency, with respect to any establishment or revision of a matching program, at least 30 days prior to conducting such program, publish in the Federal Register
notice of such establishment or revision.

. . . **(g) Civil remedies.**

(1) Whenever any agency--

(A) makes a determination under subsection (d)(3) of this section not to amend an individual's record in accordance with his request, or fails to make such review in conformity with that subsection;

(B) refuses to comply with an individual request under subsection (d)(1) of this section;

(C) fails to maintain any record concerning any individual with such accuracy, relevance, timeliness, and completeness as is necessary to assure fairness in any determination relating to the qualifications, character, rights, or opportunities of, or benefits to the individual that may be made on the basis of such record, and consequently a determination is made which is adverse to the
individual; or

(D) fails to comply with any other provision of this section, or any

rule promulgated thereunder, in such a way as to have an adverse effect on an individual, the individual may bring a civil action against the agency, and the district courts of the United States shall have jurisdiction in the matters under the provisions of this subsection.

(2) (A) In any suit brought under the provisions of subsection (g)(1)(A) of this section, the court may order the agency to amend the individual's record in accordance with his request or in such other way as the court may direct. In such a case the court shall determine the matter de novo.

(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

(3) (A) In any suit brought under the provisions of subsection (g)(1)(B) of this section, the court may enjoin the agency from withholding the records and order the production to the complainant of any agency records improperly withheld from him. In such a case the court shall determine the matter de novo, and may examine the contents of any agency records in camera to determine whether the records or any portion thereof may be withheld under any of the exemptions set forth in subsection (k) of this section, and the burden is on the agency to sustain its action.

(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

(4) In any suit brought under the provisions of subsection (g)(1)(C) or (D) of this section in which the court determines that the agency acted in a manner which was intentional or willful, the United States shall be liable to the individual in an amount equal to the sum of--

(A) actual damages sustained by the individual as a result of the refusal or failure, but in no case shall a person entitled to recovery

receive less than the sum of $ 1,000; and

(B) the costs of the action together with reasonable attorney fees as determined by the court.

(5) An action to enforce any liability created under this section may be brought in the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, without regard to the amount in controversy, within two years from the date on which the cause of action arises, except that where an agency has materially and willfully misrepresented any information required under this section to be disclosed to an individual and the information so misrepresented is material to establishment of the liability of the agency to the individual under this section, the action may be brought at any time within two years after discovery by the individual of the misrepresentation. Nothing in this section shall be construed to authorize any civil action by reason of any injury sustained as the result of a disclosure of a record prior to September 27, 1975.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

MARK B. RASMUSSON,	§	
RASMARK JET CHARTER, INC.,	§	FILED: March 14, 1997
DEBORAH L. RASMUSSON,	§	
ANDREW A. GANTKESSY,	§	
	§	
PLAINTIFFS,	§	CIVIL ACTION:
	§	EP-95-CA-475-F
VS.	§	JURY DEMAND
	§	
LAWRENCE E. FROST,	§	
GEORGE J. WEISE,	§	
CAROL B. HALLETT,	§	
JOHN E. HENSLEY,	§	
DONALD L. REAY,	§	
MICHAEL T. LAPPE,	§	
MICHAEL J. WILCZEWSKI,	§	
FRED J. SCHROEDER,	§	
WALTER J. KING,	§	
LARRY BROWN,	§	
ERIC MILLS	§	
STEVEN ERIC PERKINS,	§	
ELI P. CHAVEZ	§	
RAPHAEL AGUIRRE	§	
TOM LENOX,	§	
FONDA R. HIVICK,	§	
ROBERT L. MARTINEZ,	§	
JOE ACOSTA,	§	
	§	
ARE SUED IN THEIR	§	
INDIVIDUAL CAPACITY,	§	
	§	
UNITED STATES CUSTOM	§	
SERVICE, (sued under THE	§	

Supreme Court, U.S.

981345 FEB 8 - 1999

No. OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

MARK B. RASMUSSON, et. al.,

Petitioners,

v.

LAWRENCE E. FROST, et. al.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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APPENDIX A
Court Orders

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APPENDIX A
COURT ORDERS

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[Filed November 9, 1998]

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 97-50283
No. 97-50533

MARK B. RASMUSSON, et al.,

Plaintiffs-Appellants,

versus

LAWRENCE E. FROST, et al.,

Defendants-Appellees.

Appeals from the United States District Court
For the Western District of Texas
(EP-95-CV-475)

Before EMILIO M. GARZA, BENAVIDES, and DENNIS, Circuit Judges.
PER CURIAM:*[1]

---

* Pursuant to 5th Cir. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir. R. 47.5.4.

The plaintiffs urge various causes of action based on alleged facts arising from a criminal investigation by numerous law enforcement officials. As the district court described the case, "the Plaintiffs, in essence, are complaining of being the targets of a criminal investigation that failed to produce evidence of indictable wrongdoing." In a detailed, comprehensive, and convincing ninety-page Memorandum Opinion and Order entered on May 27, 1997, the district court determined that plaintiffs are entitled to no relief because, among other reasons, they have failed to state a claim, or their claims are barred by limitations, or the defendants are entitled to summary judgment.

We agree with the district court that "[t]he complaint in this action reads more like a script for an Oliver Stone movie than a suit for civil damages." Essentially for the reasons stated by the district court, the judgment is AFFIRMED.

[Paragraph numbers added to text]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

Mark B. Rasmusson	§	
Deborah L. Rasmusson	§	
Andrew A. Gantkessy, and	§	
Rasmark Jet Charter, Inc.,	§	
	§	
Plaintiffs	§	
	§	
v.	§	**EP-95-CA-475**
	§	
Lawrence E. Frost,	§	May 22, 1997
George J. Weise,	§	
Carol B. Hallett,	§	
John E. Hensley,	§	
Donald L. Reay,	§	
Michael T. Lappe,	§	
Michael J. Wilczewski,	§	
Fred J. Schroeder,	§	
Walter J. King,	§	
Larry Brown,	§	
Eric Mills,	§	
Steven Eric Perkins,	§	
Eli P. Chavez,	§	
Raphael Aguirre,	§	
Tom Lenox,	§	
Fonda R. Hivick,	§	
Robert L. Martinez,	§	
Joe Acosta,	§	
	§	
In their individual capacities	§	

County of El Paso,	§
City of El Paso,	§
El Paso County Sheriff's	§
Department,	§
El Paso Police Department,	§
	§
El Paso County Sheriff Leo	§
Samaniego,	§
Chief of Police Russ Leach,	§
	§
In their official capacities	§
only	§
	§
George L. Salas,	§
James Holland,	§
Neil Baker,	§
Jerry Keith,	§
	§
In their individual and	§
official capacities	§
	§
Gail Beach,	§
Chris Hines,	§
Aero Freight, Inc.,	§
	§
Defendants	§

MEMORANDUM OPINION AND ORDER

I. INTRODUCTION

1. The complaint in this action reads more like a script for an Oliver Stone movie than a suit for civil damages. Loud cries of "conspiracy and cover-up" reverberate throughout hundreds of pages of allegations. Accused of wrongdoing is a legion of law enforcement officers, from the top brass in our nation's capital to the foot soldiers working the beat day in and day out, all allegedly ensnared in a

conspiracy web so broad that the court is left to wonder how and why so many could and would have conspired so long to harm so few. Nonetheless, the court has been patient with Plaintiffs, giving them every opportunity to show, somewhere in the vastness of their presentation, that some kind of cognizable action does exist. No showing has been forthcoming; thus, for the reasons stated herein, Plaintiffs' claims are dismissed en toto.

2. To fully understand the issues at hand, one must travel back in time to the turn of this decade. The place is El Paso, Texas; the time, circa 1989. A drug enforcement task force came into existence. When and how is not particularly relevant to the case at hand. Its objective was to investigate drug trafficking and money laundering between the United States and Mexico. The focus of this task force quickly became Jesus Flores, a Mexican national residing in El Paso, and his associates. Flores, who owned a remodeling business in El Paso, was suspected of running a large scale drug operation.

3. As the investigation progressed, task force members became aware that Flores was relying on Rasmark Jet Charter, Inc., a charter company owned by Plaintiffs Mark and Debra Rasmusson, for his transportation needs. Rasmark, and both Rasmussons, naturally became targets of the investigation, albeit never its primary targets. As the Plaintiffs tell it, they became the subjects of around the clock harassment by the Customs Service. Their planes were constantly being searched, even when no international flights were made, and their pilots constantly questioned and harassed. In time, the investigation resulted in a federal grand jury issuing indictments against nine Defendants, including Mark Rasmusson. Mr. Rasmusson was charged with one count of aiding and abetting a drug trafficking operation. He plead not guilty and his case went before a jury. Prior to the conclusion of the jury trial, however, the presiding judge directed a verdict of acquittal in Mr. Rasmusson's favor.[1]

FN 1. *United States v. Jesus Flores et al.*, EP-90-CR-258-H.

4. The story picks up again in March 1992. That month, a Financial Task Force (FTF or Task Force) was created within the Customs Service to investigate money laundering activities between the United States and Mexico.[2] The FTF was certified as an Organized Crime/Drug Enforcement Task Force (OCDETF), and was composed of numerous federal, state and local agencies. The primary focus of the Task Force was a large organization believed to be involved in large scale money laundering operations in the El Paso, Texas--Juarez, Mexico area. Here, too, the Task Force became aware that Rasmark was providing transportation services to members of that organization, and began investigating Rasmark and the Rasmussons for possible connections.

5. The investigation of Rasmark and the Rasmussons consisted of undercover surveillance work, interviewing former and current employees, interviewing the Rasmussons, conducting searches pursuant to search warrants, and requesting records from customers employing Rasmark. While circumstantial evidence linking the Rasmussons to the money laundering scheme was obtained, no charges were ever brought, and the Task Force was decertified as an Organized Crime/Drug Enforcement Task Force sometime in 1994.

6. On November 21, 1995, Plaintiffs filed their original complaint in federal district court, alleging a plethora of wrongs against numerous defendants. Because Plaintiffs' live pleading is their Third Amended Complaint, the court will not discuss the kaleidoscope of issues or defendants which have appeared, disappeared, and then reappeared, in Plaintiffs' original and subsequently amended complaints. Instead, the court will concentrate only on the Defendants sued and the

---

FN 2. The Rasmussons are under the misimpression that the FTF began its investigative activities of them and of Rasmark in 1990. That is not the case. The Task Force conducting the Flores investigation was not the same Task Force in charge of investigating the Rasmussons. Although both Task Forces were certified as Organized Crime/Drug Enforcement Task Forces, the FTF came into existence in March 1992.

issues presented in Plaintiffs' Third Amended Complaint.

7. On one side are four named Plaintiffs: Mark Rasmusson, Debra Rasmusson, Andrew Gantkessy and Rasmark Jet Charter, Inc., the company owned by the Rasmussons. Although the complaint reads as though each Plaintiff asserts each claim against various Defendants, that is not, in fact, the case. The corporate Plaintiff, Rasmark Jet Charter, Inc., for instance, cannot maintain a claim under either Bivens or § 1983, as can the natural Plaintiffs.[3] It can only seek to recover in tort against the federal government under the Federal Tort Claims Act (FTCA) for interference with contractual relations, as is explained in detail below.

8. The crux of Plaintiff Gantkessy's claim is that he lost his job with Ford Motor Company because of a letter sent to his employer by one of the Defendants, Agent Lappe. Gantkessy maintains that his First Amendment rights to freedom of association were violated and his present and future employment relations were interfered with. In fact, however, Gantkessy has failed to state claim under either the First

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FN 3. A corporation is not a "citizen" entitled to the privileges and immunities secured by federal law for purposes of § 1983. L.S. T, Inc. v. Crow, 49 F.3d 679, 683 n. 6 (11th Cir. 1995) (citing Hague v. Committee for Indus. Org., 307 U.S. 496, 514, 59 S.Ct. 954, 963, 83 L.Ed. 1423, 1436 (1939) ("Natural persons, and they alone, are entitled to the privileges an immunities which § 1 of the Fourteenth Amendment secures for 'citizens of the United States. '"). The cases cited by Plaintiffs to the court deal with the standing of associations to assert claims on behalf of their members, and not the standing of corporations to raise § 1983 claims. See, e.g., Pennell v. City of San Jose, 485 U.S. 1, 7, 108 S.Ct. 849, 855, 99 L.Ed.2d 1 (1988) (setting forth the requirements for associational standing) Hunt v. Washington State Apple Advert. Comm'n, 432 U.S. 333, 342, 97 S.Ct. 2434, 2441, 53 L.Ed.2d 383 (1977) ("This Court has recognized that an association may have standing to assert the claims of its members even where it has suffered no injury from the challenged activity.").

Amendment or any other provision of the constitution or federal law.[4] Like Rasmark's, Gantkessy's potential claims lie only in tort against the federal government under the FTCA. But all of Gantkessy's claims, like Rasmark's claims, are not actionable under the FTCA. As such, the court finds that Rasmark and Gantkessy have failed to state claims on which relief can be granted, to be more fully explained in the course of this Opinion and Order. Because they have not stated a cognizable claim, and because Gantkessy's involvement in the events in question was especially marginal, the majority of this opinion is spent discussing the various claims brought by the Rasmussons. As such, unless otherwise expressly stated, all references to "Plaintiffs" are references to the Rasmussons.

9. The Plaintiffs sue thirty-two defendants. The group includes individuals, government entities, and government departments. Among the individual Defendants are those being sued in their official capacity only, their individual capacity only, and their individual and official capacity. The court discusses the role of each Defendant in detail below

10. From what the court can tell, Plaintiffs have raised a total of eight claims. First, Plaintiffs allege that all Defendants except for Hallett, Weise, Hensley, Samaniego and Leach have conspired to deprive them of their constitutional rights under the First, Fourth, Fifth and Fourteenth Amendments. Second, Plaintiffs complain that federal agents created bogus investigation reports in violation of their Fifth Amendment rights, and then covered up their conspiratorial acts. Third, Plaintiffs allege that their 4th Amendment rights against unreasonable searches and seizures were violated. Fourth, Plaintiffs allege that all

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FN 4. Neither harm to reputation nor the consequent impairment of future employment opportunities are constitutionally cognizable injuries. Siegert v. Gilley, 500 U.S. 226,233, 111 S.Ct. 1789, 1794, 114 L.Ed.2d 277 (1991); Paul v. Davis, 424 U.S. 693, 708-09, 96 S.Ct. 1155, 1164-65, 47 L.Ed.2d 405 (1976); Vander Zee v. Reno, 73 F.3d 1365, 1369 (5th Cir. 1996).

Defendants conspired to tortiously interfere with their current and prospective business contracts and business relationships with State National Bank, Texas Commerce Bank and Ford Motor Company. And, here too, Defendants conspired to cover up this act as well. Fifth, Plaintiffs allege that the City of El Paso, the El Paso Police Department and Chief of Police Russ Leach failed to adequately train and supervise the police officers involved in investigating Plaintiffs. Naturally, the City of El Paso, the Police Department, its Chief, and the named officers all conspired to cover up their acts. Sixth, the Plaintiffs restate their fifth claim, but only against El Paso County, El Paso County Sheriff s Department and Sheriff Leo Samaniego. Seventh, Plaintiffs rehash their first claim and allege a great conspiracy on behalf of all of the Defendants. And finally, Plaintiffs allege a cover-up, or an attempted cover-up of all of the wrongful acts.

11. Plaintiffs' complaint rambles for 212 pages. Dickensian prose it is not. Rather, it is 493 mainly disjointed paragraphs, often speaking of time periods and events so far removed from the issues at hand as to be totally unrelated. From what the court can decipher, Plaintiffs are suing the individual federal Defendants under Bivens and 42 U.S.C. § 1985. The local and county entities and individuals are being sued under 42 U.S.C. §§ 1983 and 1985. The state law claims over which the court is being asked to exercise supplemental jurisdiction include civil conspiracy, gross negligence, defamation, tortious interference with business relations, tortious interference with prospective contract, tortious interference with contract relations and tortious interference with employment contract.

12. All individual Defendants have filed Motions to Dismiss, Motions for Summary Judgment, or both, on grounds of qualified immunity, statute of limitations and the failure to state a claim. Oral argument on all outstanding motions was heard by the court in El Paso on April 21, 1997. What became clear at the April 21st hearing is that the Plaintiffs, in essence, are complaining of being the targets of a criminal investigation that failed to produce evidence of indictable wrongdoing. Their complaint is that the investigation took too long and resulted in the loss of business and employment. Because the court considered various affidavits in coming to a decision, all motions to

dismiss will be construed as motions for summary judgment.[5] Having considered all motions, oral argument, and relevant case law, the court is of the opinion that no genuine issues of material fact exist as to any of the claims asserted and that all named Defendants are entitled to summary judgment as a matter of law. The court will first summarize the legal standards governing its decision and will then set forth its reasoning.

II. SUMMARY JUDGMENT ANALYSIS

13. Rule 56(c) provides that "[summary judgment] shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law."[6] A party seeking summary judgment bears the initial burden of informing the district court of the basis for the motion, and identifying those portions of the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, which the moving party believes demonstrate the absence of a genuine issue of material fact.[7] The moving party has the burden of showing that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law.[8] A dispute about a material fact is "genuine" if the evidence is such that a reasonable jury could return a verdict for the

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FN 5. *See* FED.R.Civ.P. 12(c).

FN 6. FED.R.CIV.P. 56(c).

FN 7. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325, 106 S.Ct. 2548, 2554, 91 L.Ed.2d 265 (1986); *Medowbriar Home for Children, Inc. v. G.B. Gunn*, 81 F.3d 521, 533 (5th Cir. 1996).

FN 8. *Willis v. Roche Biomedical Lab., Inc.*, 61 F.3d 313, 315 (5th Cir. 1995).

non-moving party.[9]

14. Once the movant carries this burden, the burden shifts to the nonmovant to show the existence of a genuine issue for trial.[10] This burden is not satisfied with some metaphysical doubt as to the material facts, by conclusory allegations, by unsubstantiated assertion or by only a scintilla of evidence.[11] The nonmovant "must adduce admissible evidence which creates a fact issue concerning the existence of every essential component of that party's case.[12] Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment.[13] Factual disputes that are unnecessary or irrelevant will not be counted.[14] In considering a motion for summary judgrnent, the district court must view the evidence through the prism of the substantive evidentiary burden.[15]

15. This standard provides that the mere existence of *some* factual dispute will not defeat a motion for summary judgment; Rule 56

FN 9. *Anderson v. Liberty-Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505, 2510, 91 L.Ed.2d 202 (1986); Bodenheimer v. PPG Indus., Inc., 5 F.3d 955, 956 (5th Cir. 1993).

FN 10. *Celotex*, 477 U.S. at 323-26,106 S.Ct. at 2553-54; Matsushita Electric Indus. Co. V. Zenith Radio, 475 U.S. 574, 585-87, 106 S.Ct. 1348, 1355-56, 89 L.Ed.2d 538 (1986).

FN 11. *Willis*, 61 F.3d at 315 (quoting *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994)).

FN 12 *Krim*, 989 F.2d at 1442.

FN 13 *Anderson*, 477 U.S. at 248, 106 S.Ct. at 2510.

FN 14. Id. (citing 10A C. WRIGHT, A. MILLER &M. KANE, FEDERAL PRACTICE & PROCEDURE § 2725, p. 93-95 (1983)).

FN 15. *Anderson*, 477 U.S. at 254-56, 106 S.Ct. at 2513-14.

requires that the dispute be *genuine* and material.[16] first, [sic] the substantive law will identify which facts are material.[17] Only disputes over facts that might affect the outcome of the suit under the governing law will prevent summary judgment.[18] Second, a dispute about a material fact is genuine is the evidence is such that a reasonable jury could return a verdict for the nonmoving party.[19]

16. All justifiable inferences to be drawn from the underlying facts must be viewed in the light most favorable to the party opposing the motion.[20] "If the record, viewed in this light, could not lead a rational trier of fact to find"for the nonmovant, summary judgrnent is proper.[21] On the other hand, if "the factfinder could reasonably find in [the nonmovant's] favor, then summary judgment is improper.[22] Finally, even if the standards of Rule 56 are met, a court has discretion to deny a motion for summary judgment if it believes that "a better course would be to proceed to a full trial."[23]

FN 16. *Willis*, 61 F.3d at 315 (emphasis in original).

FN 17. Id.

FN 18. Id. (citing *Anderson*, 477 U.S. at 248, 106 S.Ct. at 2510).

FN 19. Id.

FN 20. *Matsushita Elec. Indus. Co., Ltd.*, 475 U.S. at 587, 106 S.Ct. at 1356.

FN 21. *Kelley v. Price Macemon, Inc.*, 992 F.2d 1408, 1413 (5th Cir. 1993) (citing *Matsushita,* 475 U.S. at 577-78, 106 S.Ct. at 1351), *cert. denied*, 510 U.S. 1043, 114 S.Ct. 688, 126 L.Ed.2d 656 (1994).

FN 22. Id. (citing *Anderson*, 477 U.S. at 249-51, 106 S.Ct. at 2511).

FN 23. *Anderson*, 477 U.S. at 255-56, 106 S.Ct. at 2514; accord *Veillon v. Exploration Services, Inc.*, 876 F.2d 1197, 1200 (5th Cir.1989); 10A C. WRIGHT, A. MILLER & MARY KAY KANE,

III. BIVENS[24] /SECTION 1983 ANALYSIS

17. Plaintiffs have sued the City and County of El Paso, the El Paso Police and Sheriff's Departments, and Defendants Leach, Samaniego, Salas, Holland, Baker and Keith under 42 U.S.C. § 1983. Defendants Leach and Samaniego were sued in their official capacity only, while Defendants Salas, Holland, Baker and Keith were sued in their individual and official capacities. All federal Defendants were sued in their individual capacities under Bivens.[25] Section 1983 provides a remedy to individuals whose constitutional rights have been violated by a person acting under color of state law. Section 1983 is not the source of any rights, nor the source of any substantive law standards shaping the contours of those rights.[26] Rather, it is the vehicle through

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FN 23 (...continued)
FEDERAL PRACTICE AND PROCEDURE § 2728 (1983).

FN 24. *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388,91 S.Ct. 1999, 29 L.Ed.2d 619 (1971). In *Bivens, the Supreme Court upheld a cause of action for damages against a federal official responsible for injury to a constitutionally protected interest. See Garcia v. United States,* 666 F.2d 960, 962 (5th Cir.), *cert. denied*, 459 U.S. 832, 103 S.Ct. 73, 74 L.Ed.2d 72 (1982).

FN 25. A *Bivens* claim is sustainable only against government officials in their individual capacities. *Enplanar, Inc. v. Marsh*, 11 F.3d 1284, 1294 (5th Cir.), *cert. denied*, _ U.S. -, 115 S.Ct. 312, 130 L.Ed.2d 275 (1994); *Williamson v. United States Dept. of Agriculture*, 815 F.2d 368, 380 (5th Cir. 1987) (holding that a *Bivens* claim "only applies against the individual appellees in their individual capacities").

FN 26. See *Daniels v. Williams*, 474 U.S. 327,106 S.Ct. 677, 88 L.Ed.2d 662 (1986).

which federal substantive and procedural rights are vindicated.[27]

18. *Bivens* is the federal counterpart of § 1983.[28] In effect, it extends the protections afforded by § 1983 to parties injured by federal actors not liable under § 1983.[29] It affords the victim of unconstitutional conduct by a federal actor or agent a direct remedy under the Constitution.[30] In order to sustain either a *Bivens* or a § 1983 action, a plaintiff must first demonstrate the existence of a right secured by the Constitution or the laws of the United States.[31] In *Maine v. Thiboutot*,[32] the Supreme Court, in interpreting the term "and laws," held that rights created by federal statutory laws may be enforced pursuant to § 1983. Later, the Court held that the word "laws" also encompasses legally binding regulations.[33] There can be absolutely no recovery under either *Bivens* or § 1983 if there has been no deprivation of a federally protected right.[34]

FN 27. *Albright v. Oliver*, 5 10 U.S. 266, 271, 114 S.Ct. 807, 811, 127 L.Ed.2d 114 (1994) (holding § 1983 provides a "method for vindicating federal rights elsewhere conferred").

FN 28. *Abate v. Southern Pacific Transportation Co.*, 993 F.3d 107, 110 n. 14 (5th Cir. 1993).

FN 29. Id.

FN 30. Id. at 110.

FN 31. See *Davis v. Pressman*, 442 U.S. 228, 248, 99 S.Ct. 2264, 2278, 60 L.Ed.2d 846 (1979).

FN 32. 448 U.S. 1, 100 S.Ct. 2502, 65 L.Ed.2d 555 (1980).

FN 33. *Wright V. City Roanoke Redev. & Hous. Auth.*, 479 U.S. 418, 107 S.Ct. 766, 93 L.Ed.2d 81 (1987).

FN 34. *Baker v. McCollan*, 443 U.S. 137, 139, 99 S.Ct. 2689, 61 L.Ed.2d 433 (1979).

19. Not only does the plaintiff have the burden of showing the existence of a federally protected right, the plaintiff also has the burden of showing that the right was clearly established. In determining whether a particular right was clearly established at the time an official acted, courts typically consider (1) whether the right in question was defined with "reasonable specificity;" (2) whether the decisional law of the Supreme Court and the applicable circuit court support the existence of the right in question; and (3) whether under pre-existing laws a reasonable official would have understood that his or her acts were unlawful.[35] Here, Plaintiffs claim that at various times their First, Fourth, Fifth and Fourteenth Amendment rights were violated. Needless to say, these are clearly established constitutional rights. Whether any of the named Defendants violated any of these rights, or even whether any of the Defendants can be held liable for possible violations, will be taken up below.

20. Once a plaintiff has established the existence of a federally protected right and that the right has been violated, the court must then decide whether some or all of the state and federal actors are nonetheless immune from suit under one of several immunity doctrines. Here, the immunity being asserted by all individual Defendants, other than Beach and Hines, is qualified immunity. Neither Beach nor Hines can assert qualified immunity because it does not apply to § 1983 suits brought against private individuals (non-public officials) acting under color of law.[36] The grant or denial of qualified immunity is a question of law for the court,[37] and will be discussed at length in the following section. Two things should be noted in conclusion. First, the qualified

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FN 35. See, e.g., *Bradway v. Gonzales*, 26 F.3d 313, 318 (2nd Cir. 1994) (citations omitted).

FN 36. See *Wyatt v. Cole*, 504 U.S. 158, 112 S.Ct. 1827, 118 L.Ed.2d 504 (1992).

FN 37. See, e.g., *Bisbee v. Bey*, 39 F.3d 1096, 1099-00 (10th Cir. 1994).

immunity defense is available in both *Bivens* and § 1983 actions.[38] Second, as under § 1983, respondeat superior liability is not available in a *Bivens* action.[39]

IV. QUALIFIED IMMUNITY

21. Each of the federal, state and local defendants has asserted the defense of qualified immunity. The defense of qualified immunity recognized in *Harlow v. Fitzgerald*[40] is a product of the genius of the common law. It is neither a complete barrier to recovery nor a true affirmative defense. Rather, its invocation serves to shift the burdens of pleading and proof in federal civil rights lawsuits brought against public officials for actions or omissions attending their performance of official duties.

22. Although the exact statement of *Harlow* qualified immunity may vary from case-to-case, the Supreme Court and the Fifth Circuit have consistently held that in order for a civil rights defendant pleading Harlow immunity to be liable, defendant's conduct must have violated "clearly established statutory or constitutional rights of which a reasonable person would have known."[41] If reasonable public officials could differ on the lawfulness of the defendant's actions, the

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FN 38. *Abate*, 993 F.3d at 110.

FN 39. *Monell v. Dept of Social Servs.*, 436 U.S. 658, 691, 98 S.Ct. 2018, 2036, 56 L.Ed.2d 611 (I 978); Abate, 993 F.3d at 110.

FN 40. 457 U.S. 800, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982).

FN 41. *Harlow*, 457 U.S. at 818, 102 S.Ct. at 2738; *Anderson*, 483 U.S. at 646 n.6, 107 S.Ct. at 3042 n.6; *Colle v. Brazos County, Texas*, 981 F.2d 237,246 (5th Cir. 1993); *Cooper v. Sheriff, Lubbock County, Texas*, 929 F.2d 1078, 1084 (5th Cir. 1991); *Bennett*, 883 F.2d at 408; *Burzynski Cancer Research Institute*, 819 F.2d at 1309.

defendant is entitled to qualified immunity.[42] Whether the conduct of which the plaintiff complains violated clearly established law is essentially a legal question.[43] Whether an official protected by qualified immunity may be held personally liable for an allegedly unlawful official action generally turns on the "objective legal reasonableness" of the action assessed in the light of the legal rules that were "clearly established" at the time it was taken.[44] For the legal rules to be considered "clearly established," the contours of the right alleged to have been violated "must be sufficiently clear that a reasonable official would understand that what he is doing violates the right;" that is, "in the light of preexisting law the unlawfulness must be apparent."[45] While there need not have been a specific ruling squarely on point on the issue in question, the law must have been sufficiently

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FN 42. *Johnston,* 14 F.3d at 1059; *White v. Taylor,* 959 F.2d 539, 544 (5th Cir. 1992); *Pfannstiel v. City of Marion,* 918 F.2d 1178, 1183 (5th Cir. 1990).

FN 43. *Mitchell*, 472 U.S. at 526, 105 S.Ct. at 2815; *Johnston*, 14 F.3d at 1059; *White*, 959 F.2d at 544.

FN 44. *Anderson*, 483 U.S. at 639,107 S.Ct. at 3038; *Salas*, 980 F.2d at 310; *Duckett v. City of Cedar Park Texas*, 950 F.2d 272, 279-80 (5th Cir. 1992); *Texas Faculty Association v. University of Texas at Dallas*, 946 F.2d 379,389(5th Cir. 1991); *Pfannstiel*, 918 F.2d at 1183; *Mouille v. City of Live Oak*, 918 F.2d 548, 552-53 (5th Cir.), *cert. denied*, _ U.S. _, 113 S.Ct. 2443, 124 L.Ed.2d 660 (1990); *Bigford v. Taylor*, 896 F.2d 972, 974 (5th Cir. 1990).

FN 45. *Anderson*, 483 U.S. at 640, 107 S.Ct. at 3039; *Salas*, 980 F.2d at 310; *White*, 959 F.2d at 544 (5th Cir. 1992); *Bigford*, 896 F.2d at 974; *Brown*, 878 F.2d at 874. *See also Jackson*, 958 F.2d at 620 (applying the Fourth Amendment test for excessive force by police officers that was in effect at the time of the incident made the basis of the plaintiff s complaint in a case in which the defendant pleaded the defense of qualified immunity).

clear to put the official on notice of the impropriety of his actions.[46]

23. The Fifth Circuit has directed courts to examine only Supreme Court and Fifth Circuit precedent in the course of determining whether a legal principle is "clearly established;" the law of other Circuits does not control this determination.[47] The qualified immunity standard gives ample room for mistaken judgments by protecting all but the plainly incompetent or those who knowingly violate the law.[48] For

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FN 46. *See Meadowbriar Home for Children, Inc. v. Gunn*, 81 F.3d 521, 530 (5th Cir. 1996); *Hassan v. Lubbock IS.D.*, 55 F.3d 1075, 1078 (5th Cir.), *cert. denied*, _U.S. _, 116 S.Ct. 532, 133 L.Ed.2d 438 (1995); *Salas,* 980 F.2d at 310; *White*, 959 F.2d at 544 ("If reasonable public officials could differ on the lawfulness of the defendant's actions, the defendant is entitled to immunity."); *Duckett,* 950 F.2d at 279-80; *Streetman,* 91 8 F.2d at 556; *Mouille*, 918 F.2d at 5 52- 53; *Hopkins v. Stice*, 916 F.2d 1029, 10 30-31 (5th Cir. 1990). *See also Brawner v. City of Richardson, Texas*, 855 F.2d 187, 192 (5th Cir. 1988) (holding that "clearly established" means the contours of the right were so clear at the time the officials acted that a reasonable official would have understood that what he was doing violated that right); *Gunaca v. State of Texas*, 65 F.3d 467, 475 n.7 (5th Cir. 1995) ("The question 'is not whether the law was settled, viewed abstractly, but whether, measured by an objective standard, a reasonable officer would know that his action was illegal.'").

FN 47. See *Brady v. Fort Bend County*, 58 F.3d 173, 175-76 (5th Cir. 1995); *Boddie v. City of Columbus, Mississippi*, 989 F.2d 745, 748 (5th Cir. 1993).

FN 48. *Hunter v. Bryant*, 502 U.S. 224,229,112 S.Ct. 534,537,116 L.Ed.2d 589 (1991); *Malley v. Briggs,* 475 U.S. 335, 341, 106 S.Ct. 1092, 1096, 89 L.Ed.2d 271 (1986); *Baker,* 75 F.3d at 198; *Brady,* 58 F.3d at 174.

executive officers in general, qualified immunity represents the norm.[49] In addition, merely negligent conduct on the part of a government official cannot meet the rather stringent standard for liability under 42 U.S.C. § 1983.[50]

24. In *Siegert v. Gilley*,[51] the Supreme Court presented the analytical framework for determining whether a plaintiffs allegations are sufficient to overcome a defendant's defense of qualified immunity asserted in a motion for summary judgment.[52] First, the court must determine whether the plaintiff has alleged a violation of a clearly established constitutional right.[53] If the plaintiff fails this step, the defendant is entitled to qualified immunity.[54] If she is successful, the issue becomes the objective legal reasonableness of defendant's conduct under the circumstances.[55]

25. A party seeking damages from an official asserting

FN 49. *See Brady*, 58 F.3d at 174 (quoting *Harlow*, 457 U.S. at 807, 102 S.Ct. at 2732).

FN 50. See *Daniels v. Williams*, 474 U.S. 327, 331-34, 106 S.Ct. 662, 664-67, 88 L.Ed.2d 662 (1986); *Davidson v. Cannon*, 474 U.S. 344, 347-48, 106 S.Ct. 668, 670-71, 88 L.Ed.2d 677 (1986); *Eason v. Thaler*, 73 F.3d 1322, 1329 n.3 (5th Cir. 1996); *Salas*, 980 F.2d at 307; *Streetman*, 918 F.2d at 557 n.3; *Herrera v. Millsap*, 862 F.2d 1157, 1160 (5th Cir. 1989); *Lewis v. Woods*, 848 F.2d 649, 652 (5th Cir. 1988); *Simmons* v. *McElveen*, 846 F.2d 337, 339 (5th Cir. 1988).

FN 51. 500 U.S. 226, 111 S.Ct. 1789, 114 L.Ed.2d 277 (1991).

FN 52. *See Baker*, 75 F.3d at 199.

FN 53. Id. (citing *Siegert*, 590 U.S. at 231, 111 S.Ct. at 1792-93).

FN 54. Id.

FN 55. Id. (citations omitted).

Harlow qualified immunity bears the burden of overcoming that defense.[56] Once a government official or employee has asserted qualified immunity and established that the allegedly wrongful acts were undertaken within the scope of his discretionary authority, the burden shifts to the party seeking damages to show that qualified immunity does not bar recovery.[57] It is not enough to carry this burden, as the Plaintiffs have sought to do, by showing that some other law enforcement officer, in the shoes of one of the Defendants, would have acted differently. Instead, there must be a showing that what was done in some way violated the constitution or federal law.

26. The Supreme Court and the Fifth Circuit have repeatedly admonished district courts that the *Harlow* qualified immunity is an immunity from suit [emphasis in original] rather than a mere defense to liability.[58] The Supreme Court and the Fifth Circuit

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FN 56. See *Foster v. City of Lake Jackson*, 28 F.3d 425, 428 (5th Cir. 1994); *Salas v. Carpenter*, 980 F.2d 299, 304 (5th Cir. 1992); *Bennett v. City of Grand Prairie*, 883 F.2d 400, 408 (5th Cir. 1989); *Whatley v. Philo*, 817 F.2d 19, 20 (5th Cir. 1987).

FN 57. *See Todd v. Hawk*, 72 F.3d 443, 446 (5th Cir. 1995); *Schultea v. Wood*, 47 F.3d 1427, 1430 (5th Cir. 1995); *Salas*, 980 F.2d at 306; *United States v. Burzynski Cancer Research Institute*, 819 F.2d 1301, 1310 (5th Cir. 1987), *cert. denied sub nom. Wolin v. United States*, 484 U.S. 1065, 108 S.Ct. 1026, 98 L.Ed.2d 990 (1988); *Saldana v. Garza*, 684 F.2d 1159, 1163 n. 14 (5th Cir. 1982), *cert. denied*, 460 U.S. 1012, 103 S.Ct. 1253, 75 L.Ed.2d 481 (1983).

FN 58. *See, e.g., Mitchell v. Forsyth*, 472 U.S. 511, 526, 105 S.Ct. 2806, 2815, 86 L.Ed.2d 411 (1985); *Salas*, 980 F.2d at 305; *Jackson v. City of Beaumont Police Department*, 958 F.2d 616, 620 (5th Cir. 1992) (holding that one of the principal purposes of the qualified immunity doctrine is to shield officers not only from liability, but also from defending against a lawsuit); *Gaines v. Davis*, 928 F.2d 705, 706-07 (5th Cir. 1991); *Streetman v. Jordan*, 918 F.2d 555, 556 (5th Cir. 1990); *Brown v. Glossip*, 878 F.2d 871, 874 (5th Cir. 1989);

have also strongly encouraged district courts to dispose of § 1983 lawsuits in which qualified immunity claims are apparent from the pleadings without resort to cumbersome and expensive discovery.[59]

27. Once a defendant pleads qualified immunity, the court must first determine whether the plaintiff has asserted a violation of a constitutional right and then whether the defendant's actions were reasonable in light of the law that was clearly established at the time the contested action occurred; until this threshold is resolved, discovery should not be allowed.[60] Currently applicable constitutional standards are used in making the determination as to whether the defendant's conduct violated a constitutionally-protected right.[61] If the plaintiff passes this threshold, the Court must determine whether the defendant's conduct was objectively reasonable under legal principles as they existed at the time of the defendant's acts or omissions.[62]

FN 58 (...continued)
Helton v. Clements, 787 F.2d 1016, 1017 (5th Cir. 1986).

FN 59. *See Anderson v. Creighton*, 483 U.S. 635, 646 n.6, 107 S.Ct. 3034, 3042 n.6, 97 L.Ed.2d 523 (1987); *Mitchell*, 472 U.S. at 526-27, 105 S.Ct. at 2815-16; *Harlow*, 457 U.S. at 818, 102 S.Ct. at 2738; *Jackson*, 958 F.2d at 620; *Gaines*, 928 F.2d at 707; *Streetman*, 918 F.2d at 556-57; *James v. Sadler*, 909 F.2d 834, 838 (5th Cir. 1990).

FN 60. *See Siegert*, 500 U.S. at 232-33, 111 S.Ct. at 1793.

FN 61. Foster, 28 F.3d at 428; *Rankin v. Klevenhagen*, 5 F.3d 103, 106 (5th Cir. 1993).

FN 62. *See Johnston v. City of Houston*, 14 F.3d 1056, 1060 (5th Cir. 1994); *Rankin*, 5 F.3d at 108; *Spann v. Rainey*, 987 F.2d 1110, 1114 (5th Cir. 1992) ("The contour, or standard, for a constitutional right may expand after the time of the alleged violation, and may be the benchmark for proof at trial of that right and its claimed violation; but as stated, the benchmark for objective reasonableness is that which existed at the time of the alleged violation - we look to the

28. The Fifth Circuit Court of Appeals has also repeatedly encouraged the district courts to (1) require highly fact-specific pleading by a plaintiff in a § 1983 lawsuit who attempts to overcome a plea of *Harlow* qualified immunity;[63] and (2) permit limited discovery pending disposition of the qualified immunity issue only in those situations in which the specific facts contained in the plaintiff s pleadings and affidavits are sufficient to defeat the defendant's claims of qualified immunity.[64]

29. "[P]laintiff's must demonstrate *prior to discovery* that their allegations are sufficiently fact-specific to remove the cloak of protection afforded by an immunity defense.[65] A complaint which raises the likely issue of immunity cannot be cast in "broad, indefinite and conclusory terms," but must include detailed facts supporting the

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FN 62 (...continued)
clearly established law at that time.").

FN 63. *See Baker v. Putnal*, 75 F.3d 190, 195 (5th Cir. 1996); *Todd,* 72 F.3d at 446; *Schultea,* 47 F.3d at 1430; *Jackson,* 958 F.2d at 620; *Streetman,* 918 F.2d at 556-57; *Brown,* 878 F.2d at 874; *Geter v. Fortenberry,* 849 F.2d 1550, 1553-54 (5th Cir. 1988); *Jacquez v. Procunier,* 801 F.2d 789, 791-93 (5th Cir. 1986); *Elliott v. Perez,* 751 F.2d 1472, 1480-82 (5th Cir. 1985)

FN 64. *See Gaines*, 928 F.2d at 707; *Brown,* 878 F.2d at 874 n.5; *Geter,* 849 F.2d at 1559-60; *Lion Boulos v. Wilson,* 834 F.2d 504, 507-09 (5th Cir. 1987).

FN 65. *Jackson*, 958 F.2d at 620; *Nieto v. San Perlita IS.D.*, 894 F.2d 174, 177-78 (5th Cir. 1990); *Jacquez*, 801 F.2d at 791; see also *Babb v. Dorman*, 33 F.3d 472, 477 (5th Cir. 1994); *James v. Sadler,* 909 F.2d 834, 838 (5th Cir. 1990) (holding that questions regarding qualified immunity are resolved on the face of the pleadings and with limited resort to pre-trial discovery).

contention that the plea of immunity cannot be sustained.[66] Discovery related to the applicability of qualified immunity is appropriate *only* when factual issues exist as to the applicability of qualified immunity.[67]

V. APPLICABILITY OF *HARLOW* QUALIFIED IMMUNITY TO LAW ENFORCEMENT OFFICERS

30. Both the United States Supreme Court and the Fifth Circuit have repeatedly held the qualified immunity described in *Harlow* applicable to law enforcement officers performing a variety of activities, including (1) making an arrest,[68] (2) using force to make an arrest,[69] (3) making a traffic stop,[70] (4)

FN 66. *Lion Boulos*, 834 F.2d at 509; *Elliott,* 751 F.2d at 1479.

FN 67. *See Gaines*, 928 F.2d at 707; *Brown*, 878 F.2d at 874 n.5; *Geter*, 849 F.2d at 1553-54; *Lion Boulos*, 834 F.2d at 507-09. In light of the seemingly complex nature of this suit, the court allowed limited discovery before addressing the issues of qualified immunity. More than once, the court has second-guessed the appropriateness of its decision. The only consolation at this juncture is that, given the results of the discovery which did take place, it is clear that no further discovery is needed before addressing the qualified immunity issues.

FN 68. *See Pierson v. Ray*, 386 U.S. 547, 555-57, 87 S.Ct. 1213,1218-19, 18 L.Ed.2d 288 (1967); *Pfannstiel*, 91 8 F.2d at 1183 (5th Cir. 1990); *Trejo v. Perez*, 693 F.2d 482 (5th Cir. 1982); *Saldana*, 684 F.2d 1159.

FN 69. *See Anderson*, 483 U.S. at 639, 107 S.Ct. at 3038; *Jackson,* 958 F.2d at 620; *Pfannstiet,* 918 F.2d at 1184; *Brown,* 878 F.2d at 873-74; but see *Mouille,* 918 F.2d at 553 (5th Cir. 1990) (holding that qualified immunity did not protect a police officer from

applying for a warrant,[71] (5) engaging in a warrantless search,[72] (6) conducting a search pursuant to a warrant,[73] and (7) conducting a post-arrest investigation.[74]

VI. LOCAL GOVERNMENT LIABILITY

31. As was noted in the previous section, individual public officers performing discretionary tasks are entitled to assert the protection of *Harlow* qualified immunity. Local governmental entities, however, such as cities, counties and school districts, may not assert qualified immunity in order to escape liability.[75] In *Owen v. City of*

FN 69 (...continued)
liability where he had used force in making an arrest that was clearly unreasonable under established legal principles).

FN 70. *See Gassner v. City of Garland, Texas*, 864 F.2d 394 (5th Cir. 1989).

FN 71. *See Malley*, 475 U.S. at 340, 106 S.Ct. at 1096; *Herrera,* 862 F.2d at 1160.

FN 72. *See Anderson*, 483 U.S. at 642-46, 107 S.Ct. at 303 8-42; *Creamer v. Porter*, 754 F.2d 1311, 1317-19 (5th Cir. 1985).

FN 73 *See Streetman*, 918 F.2d at 556 (5th Cir. 1990); *but contrast James v. Sadler,* 909 F.2d 834, 837-38 (5th Cir. 1990) (holding that qualified immunity would not protect police officers who conducted an unreasonable pat down search of the plaintiff).

FN 74. *See Sanders v. English*, 950 F.2d 1152, 1159 (5th Cir. 1992); *Duckett v. City of Cedar Park, Texas,* 950 F.2d 272, 279-80 (5th Cir. 1992).

FN 75. *See Kentucky v. Graham*, 473 U.S. 159, 167, 105 S.Ct. 3099, 3105-06, 87 L.Ed.2d 114 (1985); *Brandon v. Holt,* 469 U.S. 464, 472-73, 105 S.Ct. 873, 878, 83 L.Ed.2d 878 (1985); *Owen v. City of*

Independence,[76] the Supreme Court held that a municipality is not entitled to qualified immunity even if its officials acted in good faith.

32. Any discussion of municipal liability under § 1983 must begin with *Monell v. New York Department of Social Services*.[77] In *Monell*, female employees of the New York Department of Social Services and the Board of Education of the City of New York brought suit against the Department and its Commissioner, the Board and its Chancellor, and the City of New York and its Mayor under § 1983. All individual defendants were sued in their official capacities only. Plaintiffs complained of the fact that the Board and the Department had an official policy of compelling pregnant employees to take maternity leave without pay before such leave was required for medical reasons.[78] After recounting in great detail the legislative history of Section I (the predecessor to § 1983] of the Civil Rights Act of 1871, the Court first found "that Congress *did* intend municipalities and other local government units to be included among those persons to whom § 1983 applies."[79]

Wrote the Court:

Local governing bodies, therefore, can be sued directly

FN 75 (...continued)
Independence, 445 U.S. 622, 638, 100 S.Ct. 1398, 1409, 63 L.Ed.2d 673 (1980); *Colle v. Brazos County, Texas*, 981 F.2d 237, 244 & n.36 (5th Cir. 1993) (holding that a municipality does not enjoy § 1983 immunity that might be afforded its officials); *Fields v. City of South Houston, Texas*, 922 F.2d 1183, 1191 (5th Cir. 1991).

FN 76. 445 U.S. at 638, 100 S.Ct. at 1409.

FN 77. 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978).

FN 78. Id. at 661, 56 L.Ed.2d at 617.

FN 79. Id. at 690, 56 L.Ed.2d at 635.

> under § 1983 for monetary, declaratory, or injunctive relief where, as here, the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation or decision officially adopted and promulgated by that body's officers. Moreover, although the touchstone of a § 1983 action against a government body is an allegation that official policy is responsible for a deprivation of rights protected by the Constitution, local governments, like every other § 1983 "person," by the very term of the statute, may be sued for constitutional deprivations visited pursuant to a governmental "customs" even though such a custom has not received formal approval through the body's official decisionmaking channels.[80]

Second, as was noted earlier, the Court also held that a municipality cannot be held liable on the basis of *respondeat superior* or vicarious liability.[81]

33. Eight years after *Monell*, the Supreme Court once again took up the question of municipal liability in *Pembaur v. City of Cincinnati*.[82] The specific question facing the Court was whether, and in what circumstances, a decision by municipal policymakers on a single occasion may be construed as a municipal policy or custom of some nature.[83] Reversing the holding of the court of appeals, and relying on its reasoning in *Monell*, the Court found it to be "plain that municipal liability may be imposed for a single decision by municipal

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FN 80. Id. at 690-91, 56 L.Ed.2d at 635.

FN 81. Id. at 691, 56 L.Ed.2d at 636.

FN 82. 475 U.S. 469, 106 S.Ct. 1292, 89 L.Ed.2d 452 (1986).

FN 83. Id. at 471, 89 L.Ed.2d at 457.

policymakers under appropriate circumstances."[84] Writing for the majority, Justice Brennan stated:

> No one has ever doubted, for instance, that a municipality may be liable under § 1983 for a single decision by its properly constituted legislative body--whether or not that body has taken similar action in the past or intended to do so in the future--because even a single decision by such a body unquestionably constitutes an act of official government policy.[85]

The Court also took the opportunity to sharpen the contours of municipal liability. It sought to emphasize that not every decision by municipal officers automatically subjects the municipality to §1983 liability.

> Municipal liability attaches only where the decisionmaker possesses final authority to establish municipal policy with respect to the action ordered. The fact that a particular official-even a policymaking official--has discretion in the exercise of a particular function does not, without more, give rise to municipal liability based on an exercise of that discretion. That official must also be responsible for establishing final government policy respecting such activity before the municipality can be held liable. . . Like other governmental entities, municipalities often spread policymaking authority among various officers and official bodies. As a result, particular officers may have authority to establish binding county policy respecting particular matters and to adjust that policy for the county in changing circumstances.... We

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FN 84. Id. at 480, 89 L.Ed.2d at 463.

FN 85. Id.

> [,therefore,] hold that municipal liability under § 1983 attaches where--and only where--a deliberate choice to follow a course of action is made from among various alternatives by the official or officials responsible for establishing final policy with respect to the subject matter in question.[86]

The holding in *Pembaur* was reaffirmed by a plurality of the justices in *St. Louis v. Praprotnik*.[87]

34. For purposes of liability under § 1983, cities, counties and other local governmental entities are treated the same.[88] The law is well-settled that a suit against a public official in his or her "official capacity" is, in reality, a suit against the governmental entity the official represents.[89] Suing a government official in his "official capacity" is nothing more than a pleading preference.

35. As was established in *Monell* and its progeny, in order to

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FN 86. Id. at 481-83, 89 L.Ed.2d at 464-65 (citations omitted).

FN 87. 485 U.S. 112, 127, 108 S.Ct. 915, 99 L.Ed.2d 107, 120 (1988) (plurality opinion).

FN 88. *See Colle*, 981 F.2d at 244 n.30.

FN 89. *See Hafer v. Melo*, 502 U.S. 21, 25, 112 S.Ct. 358, 361-62, 116 L.Ed.2d 301 (1991); *Kentucky*, 473 U.S. at 165-66, 105 S.Ct. at 3105; *Brandon*, 469 U.S. at 471-72, 105 S.Ct. at 878; *Brooks v. George County, Mississippi*, 84 F.3d 157, 165 (5th Cir. 1996) (holding that suit against county sheriff in his official capacity was suit against the County); *Baker*, 75 F.3d at 195 (5th Cir. 1996) (holding that claims against a City police chief in his official capacity were really claims against the City); *Bennett v. Pippin*, 74 F.3d 578, 584-85 (5th Cir. 1996); *Sanders*, 950 F.2d at 1159 n.13 (5th Cir. 1992).

recover a judgment against a local government entity under § 1983, a plaintiff must establish that he sustained a deprivation of constitutional or other federally-protected rights as a result of some official policy, practice or custom of that entity. Although occasionally referred to as if they were three distinct creatures, a local government entity's official "policies," "practices" and "customs" are really three different terms for those actions which sufficiently bear the imprimatur of a governmental entity's final policymakers to justify holding that entity responsible for its own actions. An official "policy" is most commonly defined as a policy statement, ordinance, regulation or decision that is officially adopted and promulgated by the municipality's lawmaking officers or by an official to whom the lawmakers have delegated policy making authority.[90] A municipal "policy" must be the result of a "deliberate and conscious choice" by a municipal policymaker."[91] An official "custom" or "practice," on the other hand, is most commonly defined as a "persistent, widespread practice of city officials or employees," which, although not authorized by officially adopted and promulgated policy, is so common and well-settled as to constitute a custom that fairly represents municipal policy; actual or constructive knowledge of such custom or practice must be attributable to the governing body of the municipality or to an official to whom that body has delegated

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FN 90. *See Eugene v. Alief I.S.D.*, 65 F.3d 1299,1304-05 (5th Cir. 1995); *Colle*, 981 F.2d at 244-45; *Nobby Lobby, Inc. v. City of Dallas*, 970 F.2d 82, 92 (5th Cir. 1992); *Johnson v. Moore*, 958 F.2d 92, 94 (5th Cir. 1992); *Matthias v. Bingley*, 906 F.2d 1047, 1054 (5th Cir.), *modified*, 915 F.2d 946 (1990); *Bennett v. City of Slidell*, 735 F.2d 861, 862 (5th Cir. 1984), *cert. denied*, 472 U.S. 1016, 105 S.Ct. 3476, 87 L.Ed.2d 612 (1985).

FN 91. *City of Canton v. Harris*, 489 U.S. 378, 38 9, 109 S Ct. 1197, 1205, 103 L.Ed.2d 412 (1989); *Pembauer*, 475 U.S. at 483, 106 S.Ct. at 1300; *Gonzalez v. Ysleta I.S.D.*, 996 F.2d 745, 752-60 (5th Cir. 1993); *Colle*, 981 F.2d at 245; *Rhyne v. Henderson County*, 973 F.2d 3 86, 392 (5th Cir. 1992).

policy-making authority.[92]

36. When the discretionary decisions of a local governmental official are constrained by official governmental policies not of that official's making, the official's disobedience of, or departure from, those policies is not considered an act of the governmental entity for § 1983 purposes.[93] Thus, when a non-policymaking local governmental employee acts in a manner inconsistent with established governmental policy, the governmental employer cannot be held liable therefor under § 1983.[94]

37. Two basic configurations can lead to a municipality's liability under § 1983 for the acts of its officials: (1) a municipality's final policymakers are held effectively to have made policy or condoned the creation of a custom by knowingly ratifying the unconstitutional or illegal actions of subordinate officers or employees, and (2) the municipality may be held liable for the illegal or unconstitutional actions of its final policymakers [emphasis in original] themselves as they engage in the setting of goals and the determination of how those goals will be achieved.[95]

FN 92. *See Colle*, 981 F.2d at 244-45; *Nobby Lobby, Inc.*, 970 F.2d at 92; *Johnson*, 958 F.2d at 94; *Fields*, 922 F.2d at 1192; *Matthias*, 906 F.2d at 1054; *Bennett*, 735 F.2d at 862.

FN 93. *See City of St. Louis*, 485 U.S. at 121-22,108 S.Ct. at 923; *McConney v. City of Houston*, 863 F.2d 1180, 1184 & n.2 (5th Cir. 1989).

FN 94. Id.

FN 95. *See Turner v. Upton County, Texas*, 915 F.2d 133, 136 (5th Cir.), *cert. denied*, 498 U.S. 1069, 111 S.Ct. 788, 112 L.Ed.2d 850 (1991). As discussed at greater length below, a governmental entity's final policymakers in an area are those individuals with the authority to independently perform the joint tasks of (1) setting goals for the

38. As to the first situation, i.e., liability based upon officially-sanctioned custom or practice, isolated instances of official misconduct by a governmental entity's non-policymaking employees are inadequate to prove knowledge and acquiescence by the entity's policymakers;[96] however, sufficiently numerous prior incidents of official misconduct may tend to prove a custom and accession to that custom by municipal policymakers.[97] To succeed, a § 1983 claim

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FN 95 (...continued)
governmental entity in their area of responsibility and (2) selecting the methods by which the governmental entity attempts to achieve those goals.

FN 96. *See Fraire*, 957 F.2d at 1278 (holding that a city's failure to discipline a police officer for an isolated incident involving the alleged use of excessive force to effect an arrest did not give rise to an inference that the city had an official policy authorizing or encouraging police misconduct); *Rodriguez v. Avita*, 871 F.2d 552, 554-55 (5th Cir.), *cert. denied sub nom. Rodriguez v. City of Brownsville*, 493 U.S. 854, 110 S.Ct. 156, 107 L.Ed.2d 114 (1989); *Palmer v. City of San Antonio*, 810 F.2d 514, 516 (5th Cir. 1987); *Bennett*, 728 F.2d at 768 n.3 (5th Cir. 1984) ("Isolated violations are not the persistent, often repeated, constant violations that constitute custom and policy."); *Languirand v. Hayden*, 717 F.2d 220, 227 (5th Cir. 1983) (holding that a § 1983 plaintiff asserting police misconduct must allege a "pattern of similar incidents in which citizens were injured or endangered" by policy-consistent misconduct or that serious incompetence or misbehavior was general or widespread throughout the police force), *cert. denied sub nom. Languirand v. City of Pass Christian, Miss.*, 467 U.S. 1016, 104 S.Ct. 2656, 81 L.Ed.2d 363 (1984); *Berry v. McLemore*, 670 F.2d 30, 33 (5th Cir. 1982), *overruled on other grounds, International Woodworkers of America v. Champion-International Corp.*, 790 F.2d 1174, 1181 (5th Cir. 1986).

FN 97. *See Nobby Lobby, Inc.*, 970 F.2d at 92-93 (holding that the City could be held liable for the numerous seizures by municipal

against a municipal entity must be based on the implementation or execution of a policy or custom which was officially adopted by that entity's official policy-makers.[98]

39. The second *configuration*, i.e., liability based upon the official actions of final [emphasis in original] policymakers, has been the subject of several Supreme Court decisions since *Monell*. In *City of Oklahoma v. Tuttle*,[99] a plurality of the Supreme Court held that proof of a single incident of unconstitutional activity is not sufficient to impose liability on the municipality, unless there is proof that it was caused by an existing, unconstitutional municipal policy, attributable to a final municipal policymaker.[100] However, as was noted *supra*,

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FN 97 (... continued)
police of video and other equipment from adult video arcades over a period of two years where the police obtained approval from the City Attorney's office, before commencing the seizures, and the seizures continued even after the City had requested a federal court to stay a lawsuit filed by arcade operators to permit the state courts to first address the state statute relied upon by the police for the seizures); *Matthias,* 906 F.2d at 1054 (holding that a city could be held liable for a persistent, widespread, and longstanding p practice by the police chief for failing to provide adequate notice to the lawful owners of property lawfully-seized by the police of their right to re-claim same prior to disposition thereof by the police, where responsibility for disposing of such property had been delegated by the city to the police chief); *McConney,* 863 F.2d at 1184 & n.2.

FN 98. *Meadowbriar Home for Children, Inc.*, 81 F.3d at 530; *Krueger,* 66 F.3d at 76.

FN 99. 471 U.S. 808, 105 S.Ct. 2427, 85 L.Ed.2d 791 (1985).

FN 100. *See Turtle*, 471 U.S. at 823-24, 105 S.Ct. at 2436. That opinion garnered the support of only its author, then-Justice

the Court reversed itself in *Pembaur*,[101] and held that municipal liability may, under appropriate circumstances, be imposed for a single decision by final municipal policymakers.[102] One circumstance agreed upon by the Justices in *Pembaur* where such would be the case is that which occurs when a government decisionmaker possessing final authority with respect to an area of government responsibility orders or directly participates in the action that causes the alleged violation of the plaintiff's rights.[103]

FN 100 (...continued)
Rhenquist, Chief Justice Burger, and Justices White and O'Connor. Justices Brennan, Marshall, and Blackmun, concurring only in the judgment, specifically rejected the implication in the plurality's opinion that only existing municipal policies could form the basis for municipal liability where the acts of an official possessing final municipal policymaking authority were at issue. Id., 471 U.S. at 831-32,105 S.Ct. 2440-41.

FN 101. 475 U.S. 469, 106 S.Ct. 1292, 89 L.Ed.2d 452 (1986).

FN 102. *Id.* at 480-81, 106 S.Ct. at 1298-99. The Pembauer plurality, Justices Brennan, White, Marshall, and Blackmun, held that a municipality may be held liable under § 1983) for a single decision by its properly constituted legislative body, regardless of whether that body had taken similar action in the past or intended to do so again in the future, because even a single decision by such a body unquestionably constitutes an act of official government policy. *Id.* at 480, 106 S.Ct. at 1298. Justices Stevens and O'Connor, each writing separately, agreed with this portion of the plurality opinion. *Id* at 491, 106 S.Ct. at 1304. It is clear in this Circuit that a single unconstitutional act by a local governmental entity's final policy-maker can subject that governmental entity to liability under § 1983. *See Bennett,* 74 F.3d at 586 *(citing Brown v. Bryan County, Oklahoma,* 67 F.3d 1174, 1183 (5th Cir. 1995)).

FN 103. *Pembaur*, 475 U.S. at 481, 106 S.Ct. at 1299 ("If the decision to adopt a particular course of action is properly made by

40. Authority to make municipal policy may be granted directly by a legislative enactment or may be delegated by an official who possesses such authority, and whether an official has final policymaking authority is a question of state law.[104] Identifying a final policymaker requires examination of applicable state law regarding the legal authority possessed by local officials.[105] Generally, final policymakers include those local officials who, by virtue of state law, (1) hold virtually absolute sway over the particular tasks or areas of responsibility entrusted to them and (2) are accountable to no one other than the voters for their conduct in those areas.[106] Final policymakers are usually empowered by the state to "define objectives and choose the means of achieving them" without supervision by any other governmental official.[107] For example, under Texas law, County Sheriffs

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FN 103 (...continued)
that government's authorized decisionmakers, it surely represents an act of official government 'policy' as that term is commonly understood. More importantly, where action is directed by those who establish governmental policy, the municipality is equally responsible whether that action is to be taken only once or to be taken repeatedly."); *accord also Brooks,* 84 F.3d at 165; *Brown,* 67 F.3d at 1183 (both holding that a single decision by a final policymakers within the area of his responsibility can impose liability on the responsible governmental entity).

FN 104. *See Pembaur*, 475 U.S. at 483, 106 S.Ct. at 1300 (plurality).

FN 105. *See Bennett*, 74 F.3d at 586; *Doe v. Rains County I.S.D.*, 66 F.3d 1402, 1407 (5th Cir. 1995).

FN 106. *See Turner*, 915 F.2d at 136.

FN 107. *See Colle*, 981 F.2d at 244; *Turner,* 915 F.2d at 136; *Rhode v. Denson,* 776 F.2d 107, 109 (5th Cir.), *cert. denied sub nom. Rhode v. San Jacinto Cty., Texas,* 476 U.S. 1170, 106 S.Ct. 2891, 90

are the final county policymakers in the area of law enforcement.[108] In addition to persons identifiable as final policymakers under state law, the actions of officials who exercise final policymaking authority as a result of a formal delegation of that authority from a local governmental entity's governing body can also provide a basis for holding that governmental entity liable under § 1983.[109] Only the actions of, or policies established by, those local governmental officials who exercise independent, final, decisionmaking authority can create a basis for holding a local governmental entity liable under § 1983.[110] The Fifth

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L.Ed.2d 978 (1986).

FN 108. *See Bennett*, 74 F.3d at 586; *Colle*, 981 F.2d at 224 & n.35; *Turner*, 915 F.2d at 136; *Familias Unidas v. Briscoe*, 619 F.2d 391, 404 (5th Cir. 1980).

FN 109. *See Pembaur*, 475 U.S. at 483, 106 S.Ct. at 1300 (plurality); *Matthias*, 906 F.2d at 1054 (holding a city liable for the illegal actions of a city police chief in connection with the disposition of seized private property where the city had delegated responsibility for the property to the chief); *Crowder v. Sinyard*, 884 F.2d 804, 829 (5th Cir. 1989) (holding that a jury's finding that a city had delegated its final policymaking authority in the area of law enforcement to a city police chief was supported by the evidence and warranted imposing liability upon the city), *cert. denied*, 496 U.S. 924, 110 S.Ct. 2617, 110 L.Ed.2d 638 (5th Cir. 1990).

FN 110. *See Eugene*, 65 F.3d at 1304-05 (holding that a school district could not be held liable based on a school principal's directive to have a parent arrested, despite evidence showing the delegation of considerable authority to the principal because there was no showing the principal had been delegated policymaking authority over school security); *Sanders*, 950 F.2d at 1159 n.13 (holding that a city may be held liable on account of the unconstitutional conduct of city officials only if the city's policy or custom played a part in the violation); *Burns v. City of Galveston*, 905 F.2d 100, 102-03 (5th Cir. 1990) (holding that § 1983 liability for a city can only be based on a

Circuit summarized municipal liability best in *Richardson v. Oldham*:[111]

> A municipality is liable under § 1983 "only where the municipality itself causes the constitutional violation at issue." The violation must be caused by a "municipal policy or custom" consisting of a "'deliberate' or 'conscious" choice by city policymakers." This Court has stated that a municipal policy may be established by a persistent pattern of conduct as well as by a formal legal declaration.

41. Municipal liability under § 1983 attaches only when the official responsible for establishing final policy with respect to the subject matter in question makes a deliberate choice to follow a course of action from among various alternatives.[112] Thus, mere negligence

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FN 110 (...continued)
deliberate choice to follow a course of action made by final policymakers); *Worsham v. City of Pasadena,* 881 F.2d 1336, 1240-41 (5th Cir. 1989) (holding that the existence of a council with the authority to review and set aside a city mayor's decision to terminate a municipal employee, which it did, precluded a finding that the mayor possessed final city policymaking authority over the employee's termination and, therefore, also precluded a finding of municipal liability resulting from the mayor's subsequently-vacated action).

FN 111. 12 F.3d 1373, 1381-82 (5th Cir. 1994).

FN 112. See Pembaur, 475 U.S. at 483-84, 106 S.Ct. at 1299-1300 (plurality); *see also City of St. Louis,* 485 U.S. at 121-22, 108 S.Ct. at 923; *Richardson*, 12 F.3d at 1381-82; *Gonzalez*, 996 F.2d at 752-60; Colle, 981 F.2d at 244-45; *Rhyne*, 973 F.2d at 392; *Benavides,* 955 F.2d at 972-73.

on the part of local governmental final policymakers does not give rise to governmental liability under § 1983.[113]

VII. STATUTE OF LIMITATIONS ANALYSIS UNDER 42 U.S.C. §§ 1983, 1985 AND UNDER BIVENS

42. Civil rights actions brought under 42 U.S.C. §§ 1981, 1983, 1995, 1988 and under *Bivens* are deemed analogous to Texas tort actions and, therefore, the applicable limitations period is the two years fixed by Article 5526 of the Vernon's Texas Annotated Statutes, now recodified as TEX.Civ.PRAC.& REM. CODE ANN. § 16.003 (Vernon 1986).[114] Although state law controls which limitations period applies, federal law determines when a cause of action accrues.[115] Under federal law, a cause of action accrues the moment the plaintiff knows or has reason to know of the injury that is the basis of his complaint.[116] Thus, the statute of limitations begins to run from the

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FN 113. *See Collins v. City of Harker Heights*, 916 F.2d 284, 286 (5th Cir. 1990), *aff'd*, 503 U.S. 115, 112 S.Ct. 1061, 117 L.Ed.2d 261 (1992); *see also Daniels v. Williams*, 474 U.S. 326, 331-34, 106 S.Ct. 662, 664-67, 88 L.Ed.2d 662 (1986); *Davidson v. Cannon*, 474 U.S. 344, 347-48, 106 S.Ct. 668, 670-71, 88 L.Ed.2d 677 (1986); *Salas*, 980 F.2d at 307; *Streetman*, 918 F.2d at 557 n.3; *Herrera*, 862 F.2d at 11 60; *Lewis v. Woods*, 848 F.2d 649, 652 (5th Cir. 1988); *Simmons v. McElveen*, 846 F.2d 337, 339 (5th Cir. 1988).

FN 114. *See Heltron v. Clements*, 832 F.2d 332, 334 (5th Cir. 1987) (*citing Kline v. North Texas State University*, 782 F.2d 1229, 1232 (5th Cir. 1986); *Moore v. El Paso County*, 660 F.2d 586, 589 (5th Cir.1981), *cert denied*, 459 U.S. 822,103 S.Ct. 51, 74 L.Ed.2d 57 (1982)).

FN 115. *Id.* at 334; *Rubin v. O'Koren*, 621 F.2d 114, 116 (5th Cir. 1 980).

FN 116. *Moore v. McDonald*, 30 F.3d 616, 620-21 (5th Cir. 1994); *Heltron*, 832 F.2d at 334-3 5; *Rubin*, 621 F.2d at 116.

moment the plaintiff becomes aware that he has suffered an injury or has sufficient information to know that he has been injured.[117]

43. In an effort to avert the statute of limitations bar on a majority of their claims, Plaintiffs assert that they were the subjects of a conspiracy,[118] the last over act of which was the execution of two search warrants on November 22, 1993. Thus, argue the Plaintiffs, the statute of limitations did not begin to run until that date, even for all events occurring months or years earlier. A conspiracy may be charged under § 1983 as the legal mechanism through which to impose liability on all of the Defendants without regard to who committed the particular

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FN 117. *Moore*, 303 F.3d at 621 (*citing Gartrell v. Gaylor,* 981 F.2d 254, 257 (5th Cir. 1993) ("the statute of limitations ... begins to run when the plaintiff is in possession of the 'critical facts that he has been hurt and who has inflicted the injury. . . .'") *(quoting Lavelle v. Listi,* 611 F.2d 1129, 1131 (5th Cir. 1980))); *Rubin,* 621 F.2d at 116 *(citing Singleton v. City of New York* 632 F.2d 185, 192 (2nd Cir.), *cert. denied,* 480 U.S. 920, 101 S.Ct. 1368, 67 L.Ed.2d 347 (1980)).

FN 118. Plaintiffs, in essence, make two allegations of conspiracy, although they fail to clearly differentiate between them. Plaintiffs first allege conspiracy under 42 U.S.C. § 1985. They then allege conspiracy under state law. Plaintiffs are not entitled to recover under either theory of conspiracy because all law enforcement Defendants are entitled to qualified immunity and Plaintiffs have not proffered any evidence whatsoever, nor even made an allegation that Defendants Beach and Hines conspired with each other to deprive Plaintiffs of equal protection of the laws. To state a civil rights conspiracy claim under § 1985, Plaintiffs must allege: (1) conspiracy involving two or more persons; (2) for purposes of depriving, either directly or indirectly, any person or class of persons of equal protection of laws; and (3) act in furtherance of conspiracy; (4) which causes injury to person or property, or deprivation of any right or privilege of citizens of the United States. *See Suttles v. United States Postal Service*, 927 F. Supp. 990 (S.D.Tex. 1996).

act, but "a conspiracy claim is not actionable without an action violative of § 1983."[119] In *Pfannstiel,* the court found that when each state action alleged to have harmed the Plaintiffs was determined to be qualifiedly immune, there was no need to reach the issue of whether a conspiracy existed to engage in those actions.[120] Unless Plaintiffs first prove liability as to any of the Defendants under § 1983 or *Bivens*, i.e., that the Defendant or Defendants in question violated a well established constitutional right or federal law and are not entitled to any of the immunities, their conspiracy claim is not actionable. Although the court finds (and discusses below) that Plaintiffs have failed to establish a violation of any constitutional right or federal law, Plaintiffs also encounter another bar to recovery under limitations.

44. While Plaintiffs characterize the events in this case as occurring in the course of a conspiracy, such a characterization does not extend the time when the statute of limitations begins to run. Indeed, Plaintiffs misapprehend the different rules applicable to civil and criminal cases. On the criminal side, the statute of limitations for a federal conspiracy charge does not begin to run until the last overt act pursuant to the conspiracy has been committed.[121] On the civil side, the actionable injury to a plaintiff results from the overt acts of the individual defendants, not from the mere continuation of a conspiracy.[122] Thus, the statute of limitations for a wrongful act, even

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FN 119. *Hale v. Townley*, 45 F.3d 914, 920 (5th Cir. 1995) (citing *Pfannstiel*, 918 F.2d at 1187 (citations omitted)).

FN 120. *Id.* at 920-21 (citing *Pfannstiel,* 918 F.2d at 1187-88).

FN 121. *Heltron*, 832 F.2d at 335 (citing *United States v. Parker,* 586 F.2d 422, 430 (5th Cir.), *cert. denied* 441 U.S. 962, 99 S.Ct. 2408, 60 L.Ed.2d 1067 (1978)).

FN 122. *Turner*, 967 F.2d at 185 ("Critically, the actionable injury in a civil conspiracy flows from the overt acts of the defendants, not from the mere continuation of a conspiracy."); *Heltron,* 832 F.2d at

an act done in furtherance of a conspiracy, begins to run when the Plaintiffs knew or should have known of that act, and not when the last over act of the conspiracy transpired.

45. Quoting favorably from the Second Circuit opinion in *Singleton v. City of New York*,[123] the Fifth Circuit wrote:

> Characterizing Defendants' separate wrongful acts as having been committed in furtherance of a conspiracy ... does not postpone the accrual of claims based on individual wrongful acts.... To permit [a plaintiff] to wait and toll the running of the statute simply by asserting that a series of separate wrongs were committed pursuant to a conspiracy would enable him to defeat the purpose of the time-bar, which is to preclude the resuscitation of stale claims.[124]

Therefore, any cause of action against each Defendant accrued as soon as the Plaintiffs knew or should have known of an overt act involved in the alleged conspiracy.

46. Under Texas law, the statute of limitations on a claim for civil conspiracy is two years.[125] The gist of a civil conspiracy is the

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FN 122 (...continued)
335 *(citing Kadar Corporation v. Milbury,* 549 F.2d 230,234 (1st Cir.1977); *Hoffman v. Halden,* 268 F.2d 280,295 (9th Cir.1959), *overruled on other grounds,* 300 F.2d 24(1962)).

FN 123. 632 F.2d 185, 192 (2nd Cir. 1980).

FN 124. Heltron, 832 F.2d at 335.

FN 125. *Smith v. Little*, 903 S.W.2d 780, 786 (Tex.App.-Dallas 1995, no writ); *Connell v. Connell,* 889 S.W.2d 534, 541 (Tex.App.-San Antonio 1994, *writ denied); Coppock & Teltschik v. Mayor, Day & Caldwell,* 857 S.W.2d 631, 639 (Tex.App.--Houston

damage resulting from commission of a wrong which injures another, and not the conspiracy itself.[126] An actionable conspiracy, therefore, consists of wrongs that would have been actionable against the individual conspirators.[127] Generally, then, if an act by one person cannot give rise to a cause of action, the same act cannot give rise to a cause of action when done pursuant to an agreement between several people.[128]

47. Because an allegation of conspiracy does not extend the time period from when the statute of limitations begins to run, and because the statute of limitations for both a claim of conspiracy and any claims brought pursuant to Bivens/§ 1983 is two years from the day Plaintiffs knew or should have known of the alleged wrongs, Plaintiffs' claims against all Defendants, except those who participated in the execution of the November 22, 1993 search warrants, are untimely. Later discussion will show the Defendants to whom limitations are applicable. As to those Defendants, who participated in the execution of the 1993 search warrants, Plaintiffs' conspiracy claims are not actionable because they have failed to state a claim under Bivens/§ 1983 against any of these Defendants.

VIII. FEDERAL TORT CLAIMS ACT ANALYSIS

48. In their fourth cause of action, Plaintiffs allege that

FN 125 (...continued)
(1st Dist.] 1993, *writ denied).*

FN 126. *Schlumberger Well Surveying Corp. v. Nortex Oil & Gas Corp.*, 435 S.W.2d 854, 856 (Tex. 1968).

FN 127. Schoellkopf v. Pledger, 778 S.W.2d 897, 900 (Tex.App.-Dallas 1989, writ denied).

FN 128. *Id.*

several of the federal Defendants[129] tortiously interfered with Plaintiffs' prospective contracts, contract negotiations and business relationships with various entities. Specifically, Plaintiffs allege that various agents visited two financial institutions and provided false and misleading information concerning the investigation, which resulted in the financial institutions' dismissal of the Rasmussons as customers. The crux of Plaintiffs' complaint, however, centers on a letter sent to Ford Motor Company by Agent Lappe, requesting that Ford provide all records of its dealings with Rasmark.[130] Plaintiffs maintain that the letter, which informed Ford that one of its employees, Gantkessy, was under investigation for possible involvement in money laundering activities, was defamatory and resulted in Ford terminating its relationship with Rasmark and firing Gantkessy. Because all of Plaintiffs' claims arising out of these incidents lie in tort, and because at the time of these incidents all of the federal Defendants were acting within the course and scope of their employment, Plaintiffs' claims against them will be treated as claims against the United States under the Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 1346, 2671 et seq., and the United States will be substituted as a party Defendant on all state law tort claims. *See* 28 U.S.C. § 2679(d)(1).

49. As the sovereign, the United States is immune from suit unless, and only to the extent-that, it has consented to be sued.[131]

FN 129. The Defendants named are Frost, Lappe, Reay, Wilczewski, Schroeder, King, Brown, Hivic [sic] and Martinez.

FN 130. The letter, which was actually drafted by Agent Frost and only sent under Agent Lappe's signature, was written to Ford on July 26, 1993. Plaintiffs contend that they were not made aware of the letter until April 27, 1996, the day Gantkessy's file was received from his previous attorney, Mr. Antonio Silva. Whether or not this is true is irrelevant for purposes of disposing with this claim.

FN 131. *Saraw Partnership v. United States*, 67 F.3d 567, 569 (5th Cir. 1995); *Truman v. United States,* 26 F.3d 592, 594 (5th Cir. 1994) *(citing F.D.I.C. v. Meyer,* 510 U.S. 471, 474, 114 S.Ct. 996, 1000,

Through the enactment of the FTCA, the government has generally waived its sovereign immunity from tort liability for the negligent or wrongful acts or omissions of its agents who act within the scope of their employment.[132] Specifically, the FTCA allows the government to be held liable in tort for any

> negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

28 U.S.C. § 1346(b). The federal district courts have exclusive jurisdiction to hear claims cognizable under § 1346(b).[133] However, the exceptions to the FTCA's waiver of sovereign immunity that appear in 28 U.S.C. § 2680 limit the federal courts's jurisdiction to hear FTCA claims and, if applicable, bar a suit brought against the government.[134]

Although there is no justification for any court "to read exemptions into the [Federal Tort Claims] Act beyond those provided by

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FN 131 (...continued)
127 L.Ed.2d 308 (1994); *McNeily v. United States,* 6 F.3d 343, 347 (5th Cir. 1993)). *Williamson v. U.S.D.A.,* 815 F.2d 368, 373 (5th Cir. 1987).

FN 132. *Johnson v. United States*, 85 F.3d 217, 218-19 (5th Cir. 1996) (citing *United States v. Kubrick,* 444 U.S. 111, 117-18, 100 S.Ct. 352, 356-57,62 L.Ed.2d 259 (1979)); *Saraw Partnership,* 67 F.3d at 569.

FN 133. Truman, 26 F.3d at 594.

FN 134. *Id.*

Congress,"[135] the exceptions that do appear in the FTCA must be strictly construed in favor of the government.[136]

50. In the Fifth Circuit, plaintiffs bear the burden of proving that defendant's conduct was outside the scope of his employment, without needing to refute the counterweight of the Attorney General's certification as prima facie evidence of scope of employment.[137] The Fifth Circuit decided to follow the approach taken by the First,[138] Seventh,[139] Ninth[140] and Eleventh[141] Circuits in discounting the Attorney General's certification as evidence of the scope of employment. The Court wrote:

> In *S.J & W. Ranch*, the Eleventh Circuit concludes that the Attorney General's scope certification does not warrant judicial deference based on: (1) the interpretation that removal and substitution

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FN 135. *Rayonier, Inc. v. United States*, 352 U.S. 315, 320,77 S.Ct. 374,377, 1 L.Ed.2d 354 (1957).

FN 136. *Truman*, 26 F.3d at 594 (citing *Atorie Air, Inc. v. Federal Aviation Admin.*, 942 F.2d 954, 958 (5th cir. 1991)).

FN 137. *Williams v. United States*, 71 F.3d 502, 506 (5th Cir. 1996).

FN 138. *Nasuti v. Scannell*, 906 F.2d 802, 813 (1st Cir. 1990).

FN 139. *Hamrick v. Franklin*, 931 F.2d 1209, 1211 (7th Cir.), *cert. denied*, 502 U.S. 869, 112 S.Ct. 200, 116 L.Ed.2d 159 (1991).

FN 140. *Meridian Int'l Logistics, Inc. v. United States*, 939 F.2d 740, 744-45 (9th Cir. 1991).

FN 141. *S.J.& W. Ranch, Inc. v. Lehtinen*, 913 F.2d 1538, 1543 (11th Cir.), *cert denied*, 502 U.S. 813, 112 S.Ct. 62, 116 L.Ed.2d 38 (1990), *modified*, 924 F.2d 1555 (11th Cir. 1991).

> determinations under the [Westfall] Act are separate and distinct from scope of employment; (2) the concern that giving a conclusive effect, for purposes of substitution would enhance the power of the executive branch to dictate the judicial branch's subject matter jurisdiction, thereby raising separation of powers issues; (3) the view that the Attorney General does not possess expertise in determining an employee's scope of employment under the applicable state law; and (4) the concern that the highly discretionary nature of the Attorney General's certification may create a high risk of abuse.[142]

Thus, in order to determine whether a federal employee was acting within the scope of his or her employment, the court must apply the law of the state in which the alleged misconduct occurred.[143] In Texas, the stated test for "scope of employment" was set forth by the Texas Supreme Court in *Robertson Tank Lines, Inc. v. Van Cleave*.[144] According to *Robertson*, an employee acts within the course and scope of his employment when his actions are: (1) within the general authority given to him by his employer; (2) in furtherance of the master's business; and (3) for the accomplishment of the object for which he is employed.[145] All federal defendants sued in tort have affied that at all times they were acting in good faith and all of their actions were taken in furtherance of the investigation of Plaintiffs. In fact, Plaintiffs have themselves pled, at one point or another in their complaint, that all law enforcement Defendants "were acting under color of their federal authority, federal laws, statutes, regulations, policies, customs or usages

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FN 142. Williams, 71 F.3d at 505-06.

FN 143. *Palmer v. Flaggman*, 93 F.3d 196, 199 (5th Cir. 1996); *Garcia v. United States,* 62 F.3d 126, 127 (5th Cir. 1995).

FN 144. 468 S.W.2d 354 (Tex. 1971).

FN 145. *Id.* at 359.

or the DEA, USCS, IRS." As such, Plaintiffs have failed to carry their burden of proof on the "scope of employment" issue. The court, therefore, finds that all federal Defendants sued in tort were acting within the course and scope of their employment.

51. Under the FTCA, substantive state law determines whether a cause of action exists and federal law determines when that claim accrues for purposes of the statute of limitations.[146] When the statute of limitations begins to run under federal law was addressed in the section dealing with the statute of limitations. Assuming that Plaintiffs can maintain a cause of action for defamation, misrepresentation and interference with contractual relations, the court need not decide when their causes of action accrued in order to dismiss these claims from the law suit for two reasons. First, in order to maintain a cause of action under the FTCA, Plaintiffs must first have filed a claim with the federal agency or agencies employing the officials responsible for the alleged injury. All of the federal Defendants against whom tort claims were alleged were employed by the Customs Service, the IRS and the FBI. There is absolutely no evidence in the record that Plaintiffs filed claims with these agencies prior to bringing suit in this court. Because the disposition by a federal agency of Plaintiffs' claims is a jurisdictional prerequisite to this court being able to hear the matter, all tort claims asserted against any of the federal Defendants will be dismissed.

52. However, even if Plaintiffs had raised these claims with the above-named federal agencies, which claims were then rejected, the United States would still be immune from suit for the alleged torts. Title 28, United States Code, § 2680(h) provides, in part, that the United States shall be immune from suit for the actions of its employees acting within the scope of their employment that amount to libel, slander, misrepresentation, or interference with contract rights. Assuming, *arguendo*, that Agent Lappe's July 26, 1993 letter was full of misrepresentations and resulted in the injuries claimed by Plaintiffs, loss

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FN 146. *Johnson v. United States*, 85 F.3d 217, 219 (5th Cir. 1996); *Quinton v. United States*, 304 F.2d 234, 235 (5th Cir. 1962).

of business with Ford and termination of Plaintiff Gantkessy's employment, Plaintiffs still could not maintain a cause of action against the United States under the Federal Tort Claims Act. The exclusion from liability of claims concerning misrepresentation applies to negligent as well as intentional misrepresentation.[147] It also covers both affirmative acts of misrepresentation and omissions of material fact.[148] One potential claim raised by Plaintiffs that is actionable under the FTCA against the United States is "abuse of process." However, the court cannot consider the merits of that claim because neither the Rasmussons, nor Rasmark or Gantkessy, have shown any evidence that they raised this claim with any of the above-named federal agencies. Accordingly, this claim will be dismissed as well, as later discussion will reveal.

IX. CONSTITUTIONAL DEPRIVATIONS ASSERTED BY PLAINTIFFS

A. First Amendment

53. All four of the Plaintiffs first complain that their First Amendment right to freedom of association was violated by Agent Lappe's letter to Ford Motor Company and by Agent Frost's alleged visit to several financial institutions. Ford ultimately terminated its relationship with Rasmark and terminated Plaintiff Gantkessy's employment. The two financial institutions also stopped doing business with Rasmark. There is no evidence in the record establishing a causal connection between the letter and Ford's actions. But even assuming, *arguendo*, that the information contained in the letter was the sole reason for Ford's decisions, at most, Plaintiffs have a claim in tort against the government and not a claim against individual federal agents under Bivens for First Amendment violations. The same can be said

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FN 147. *Williamson v. U.S.D.A.*, 815 F.2d 368, 377 & n. 8 (5th Cir. 1987).

FN 148. *McNeily V. United States*, 6 F.3 d 343, 347 (5th Cir. 1993).

about Agent Frost's alleged visit to the financial institutions. Although there is no evidence in the record that the termination of the relationship between the banks and Rasmark had anything to do with any visit by a federal agent, even if it did, Plaintiffs simply have a potential claim in tort and not for First Amendment violations.

54. At the hearing on the various motions, it became evident that Plaintiffs have a fundamental misunderstanding of the right to association protected by the First Amendment. The First Amendment protects an individual's right to join groups and associate with others holding similar beliefs.[149] The core of protections afforded by the First Amendment apply to political belief and association.[150] The right to associate protects an individual's decision to "enter into and maintain certain intimate human relationships."[151] In general, those protected relationships have involved familial settings.[152] The type of associational right claimed by Plaintiff Gantkessy is not the type of right protected by the First Amendment. An association is composed of like minded individuals. Gantkessy's association with Ford was that of

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FN 149. Delaware, 503 U.S. 159, 163, 117 L.Ed.2d 309, 316, 112 S.Ct. 1093 (1992); Aptheher v. Sec. of State, 378 U.S. 500, 507, 12 L.Ed.2d 992, 84 S.Ct. 1659 (1964); NAACP v. Alabama ex rel. Patterson, 357 U.S. 449,460,2 L.Ed.2d 1488, 78 S.Ct. 1163 (1958).

FN 150. *Elrod v. Burns*, 427 U.S. 347, 356, 49 L.Ed.2d 547, 96 S.Ct. 2673 (1976).

FN 151. *Roberts v. United States Jaycees*, 468 U.S. 609, 617-18, 104 S.Ct. 3244, 3249, 82 L.Ed.2d 462 (1984).

FN 152. *Id.* at 619-20, 104 S.Ct. at 3250-51; *see also Copp v. Unified School Dist. No.* 501, 882 F.2d 1547 (10th Cir. 1989) (holding that high school custodian had no First Amendment right to associate generally with high school principal); *Grossart v. Dinaso,* 758 F.2d 1221, 1232 n. 16 (7th Cir. 1985) (holding that right to associate does not include emotional bonds between public employees).

master/servant. In Texas, where the at-will employment doctrine reigns supreme, Gantkessy's relationship with Ford lasted only so long as Ford found it to be beneficial. Unless Gantkessy's employment was governed by contract, Ford had the right to terminate him for whatever reason, good or bad. If Gantkessy feels he was unlawfully terminated, he should take this up with his former employer. As was noted earlier, even if the letter written by Agent Lappe was the ultimate reason for Gantkessy's termination, Gantkessy's claim possibly lies in tort against the federal government, and not under the First Amendment.

55. In the employment context most cases addressing the right of association do so in the context of government employment, and the conditioning of such employment on certain political beliefs or associations. Cases are unanimous in holding that conditioning hiring decisions on political belief and association is unconstitutional unless it can be shown that political affiliation is acceptable criterion for government employment or that the employee's private political beliefs would interfere with discharge of his public duties.[153] In the instant case, Gantkessy was employed by a private company. Even assuming the existence of state action (which would be making quite a stretch), at no time was Gantkessy's employment conditioned on professing certain political beliefs. Gantkessy's termination is simply not actionable under the First Amendment.

56. Likewise, Rasmark's "right of association" with Ford is not the type of association protected by the First Amendment. Rasmark had a contract with Ford and was possibly negotiating another. If Plaintiffs feel that Ford unjustifiably broke its contract with Rasmark, Rasmark is free to pursue a judicial remedy against Ford. If Ford was induced by Agent Lappe's latter to terminate its dealings with Rasmark, then Rasmark has a possible claim for interference with contractual relations, a tort not actionable against the United States under the FTCA. However, neither Gantkessy nor Rasmark had a constitutionally protected right to continued association with Ford. As such, Plaintiffs

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FN 153. *See, e.g., Christy v. Pennsylvania Turnpike Comm'n*, 845 F.Supp. 1097 (E.D.Pa. 1994), *aff'd*, 54 F.3d 1140 (3rd Cir. 1994).

have failed to state a claim against any of the Defendants under the First Amendment. Finally, Rasmark's claim against Agent Frost for interference with its relations with financial institutions is likewise not actionable for First Amendment violations. Since Gantkessy's and Rasmark's only possible claim is against the federal government in tort under the FTCA and since that Act's exclusions disallow such a claim, the court will dismiss Gantkessy's and Rasmark's actions.

B. Fourth Amendment

57. Plaintiffs complain of the execution of the November 22, 1993 search warrants and the collecting of trash from the Rasmusson residence. Plaintiffs first complain that the two search warrants were improperly obtained by Agent Frost. This point is addressed in the final section of the Memorandum Opinion and Order. Second, Plaintiffs complain that several of the Defendants violated their Fourth Amendment rights by foraging through their trash left outside the house. "Trash surveillance" was accomplished in the following manner: The City Sanitation Department was responsible for picking up the trash left on the curbside by the Plaintiffs. Trash collection normally took place two to three times per week. By prior agreement between the City Sanitation Department and the member agencies of the FTF, the trash collected at the Rasmusson residence would be placed in a separate bag and handed off down the route to officers conducting surveillance of the residence. Several of the Defendants who were involved in trash pickups affied that they kept their eye on the trash from the moment it was picked-up until it was handed off. Several of the documents located in the trash were cited in Agent Frost's affidavits.[154] Plaintiffs' Fourth

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FN 154. Plaintiffs spin a different tale as to how the documents in question were obtained. Officer Salas, with whom the reader will soon become acquainted, for a time served as Debra Rasmusson's body guard. During the time of this employment, Plaintiffs allege that Officer Salas obtained a key to their residence. Plaintiffs proffer that Officer Salas served as a mole, outwardly serving as Mrs. Rasmusson's bodyguard, but all along providing intelligence data on the Rasmussons to the Financial Task Force. Plaintiffs, of course,

Amendment allegations are addressed below.[155]

58. The Fourth Amendment to the United States Constitution provides in pertinent part that

> [t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause ....

FN 154 (...continued)
ignore the fact that it was Mrs. Rasmusson who approached Officer Salas to serve as her bodyguard. But that is beside the point. According to Plaintiffs, because Officer Salas knew the whereabouts of at least Debra Rasmusson, he would notify Task Force members when no one was home, and would use his house key to place the residence at the disposal of the Task Force members. Once inside, Task Force members would search for incriminating documents. It should be noted that there is not an iota of evidence in the record before the court which lends any credence to Plaintiffs' version. The court recounts their version at some length simply to show how much Plaintiffs are willing to engage in pure speculation totally divorced from reality.

FN 155. Plaintiff Gantkessy has no standing to sue any of the Defendants for any alleged Fourth Amendment violations under § 1983 because he has no privacy interest in the trash collected outside the Rasmusson residence. In order to have Fourth Amendment standing, a Defendant must show (1) an actual, subjective expectation of privacy with respect to the place being searched or items being seized, and (2) that the expectation is one that society would recognize as reasonable. *United States v. Wilson*, 36 F.3d 1298, 1302-03 (5th Cir. 1994); *United States v. Doe*, 801 F.Supp. 1562,1572 (E.D.Tex. 1992) (citing *United States v. Kye Soo Lee*, 898 F.2d 1034, 1037-38 (5th Cir.), *cert. denied*, 500 U.S. 1083, 122 L.Ed.2d 362, 113 S.Ct. 1057 (1990)).

The Fourth Amendment bars only *unreasonable* searches and seizures.[156] The reasonableness inquiry is driven by a balancing of "the nature and quality of the intrusion on the individual's Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion."[157] However, the intrusiveness of the search is not measured so much by its scope as by whether it invades an expectation of privacy that society is prepared to recognize as "reasonable."[158] For the most part, courts look askance at any searches conducted without a warrant. The Supreme Court has determined that warrantless searches and seizures are per se unreasonable unless they fall within a few narrowly defined exceptions.[159] The exceptions include searches on the basis of probable cause or consent.

FN 156. *See United States v. Pierre*, 958 F.2d 1304, 1308 (5th Cir.), *cert. denied,* 506 U.S. 898, 113 S.Ct. 280, 121 L.Ed.2d 207 (1992); *United States v. Brignoni-Ponce,* 422 U.S. 873, 877, 45 L.Ed.2d 607, 614, 95 S.Ct. 2574 (1975) (holding that the Fourth Amendment applies to seizures that involve only a brief detention short of traditional arrest); *Davis v. Mississippi,* 394 U.S. 721, 22 L.Ed.2d 676, 89 S.Ct. 1394 (1969).

FN 157. *Pierre,* 958 F.2d at 1308-09 (citing *New York v. Class,* 475 U.S. 106, 118, 106 S.Ct. 960, 968, 89 L.Ed.2d 81 (I 986)); *see also Delaware v. Prouse,* 440 U.S. 648, 654, 99 S.Ct. 2637, 2642, 77 L.Ed.2d 110 (1983).

FN 158. *Pierre*, 958 F.2d at 1309 (citing *Katz v. United States,* 389 U.S. 347, 361, 88 S.Ct. 507, 516, 19 L.Ed.2d 576 (1967)).

FN 159. *United States v. Cardenas*, 9 F.3d 1139, 1147 (5th Cir.) (citing *Coolidge v. New Hampshire,* 403 U.S. 443, 454-55, 91 S.Ct. 2022, 29 L.Ed.2d 564 (1971)), *cert. denied,* 511 U.S. 1134, 114 S.Ct. 2150, 128 L.Ed.2d 876 (1993).

59. Under *Katz v. United States*,[160] no warrantless search is lawful if the accused manifested a reasonable expectation of privacy in the object searched.[161] One cannot, however, manifest a reasonable expectation of privacy in an item once it has been abandoned.[162] The test for determining when an object has been abandoned is one of intent, which "may be inferred from words spoken, acts done, and other objective facts--the question whether the actor has voluntarily discarded or relinquished his interest in the property in question.[163] The accused need not have abandoned the searched item in the strict property sense, where an intent to relinquish ownership must be shown; merely an intent voluntary to relinquish his privacy interest is sufficient.[164] An individual has abandoned his reasonable expectation of privacy when he leaves an item in a public place.[165]

60. While the above-cited cases deal specifically with the

FN 160. 389 U.S. 347, 361, 88 S.Ct. 507, 516, 19 L.Ed.2d 576 (1967).

FN 161. *United States v. Barlow*, 17 F.3d 85, 87 (5th Cir.), *cert. denied,* 513 U.S. 850, 115 S.Ct. 148, 130 L.Ed.2d 88 (1994).

FN 162. *Barlow,* 17 F.3d at 87 (citing *Abel v. United States,* 362 U.S. 217,241, 80 S.Ct. 683, 698, 4 L.Ed.2d 668 (1960); *Hester v. United States,* 265 U.S. 57, 44 S.Ct 445, 68 L.Ed. 898 (1924); *United States v. Colbert,* 474 F.2d 174, 176 (5th Cir. 1973) (en banc)).

FN 163. *Id.* (citing *United States v. Scrivner,* 680 F.2d 1099, 1100 (5th Cir. 1982); *United States v. Colbert,* 474 F.2d 174, 176 (5th Cir. 1973) (en banc)).

FN 164. *See id.*; David H. Steinberg, Note, Constructing Homes for the Homeless? Searching for a Fourth Amendment Standard, 41 DUKE L.J. 1508,1529-32 (1992).

FN 165. *California v. Greenwood,* 486 U.S. 3 5, 40, 108 S.Ct. 1625, 1629, 1 00 L.Ed.2d 30 (1988).

Fourth Amendment in the criminal context, their holdings are equally applicable in the civil context. For Plaintiffs to prevail on their §1983 claim for violations of the Fourth Amendment, they must show that any searches or seizures undertaken by Defendants were unreasonable. Assuming, without deciding,[166] that the pick-up and hand-off of the

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FN 166. Were the court to actually decide whether the sequence in question (the pick-up and delivery of the trash) constituted a search and seizure under the Fourth Amendment, it would look to the open fields doctrine. The open fields doctrine teaches that the Fourth Amendment provides no protection for items on private property outside of a structure or curtilage of a home, or other place where society is prepared to recognize a reasonable expectation of privacy. *United States v. McKeever*, 5 F.3d 863, 867-68 (5th Cir. 1993). The fact that the officer conducting the surveillance violated trespass laws has no relevance to the Fourth Amendment inquiry. *Oliver v. United States*, 466 U.S. 170, 183, 104 S.Ct. 1735, 1743-44, 80 L.Ed.2d 214 (1984); *McKeever*, 5 F.3d at 867-68. In *Hester v. United States*, 265 U.S. 57, 59, 44 S.Ct. 445, 446, 68 L.Ed. 898 (1924), the Supreme Court held that "the special protection accorded by the Fourth Amendment to the people in their 'persons, houses, papers, and effects,' is not extended to the open fields." *United States v. Eastland*, 989 F.2d 760, 764-65 (5th Cir.), *cert. denied sub nom. Harris v. United States*, 510 U.S. 966, 114 S.Ct. 443, 126 L.Ed.2d 377 (1993). This bright line rule was called into question by *Katz v. United States*, 389 U.S. 347, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967), which focused Fourth Amendment analysis on the individual's "constitutionally protected reasonable expectation of privacy." *Id.* at 360, 88 S.Ct. at 516 (Harlan, J., concurring). However, in *Oliver v. United States*, 466 U.S. 170, 104 S. Ct. 1735, 80 L.Ed.2d 214 (1984), the Court reconciled *Hester* with *Katz*, by holding that "no expectation of privacy legitimately attaches to open fields." *Id.* at 180, 104 S.Ct. at 1742. It is well-established that the Fourth Amendment does not apply to observations while standing on open fields. *See United States v. Pace*, 955 F.2d 270, 274 (5th Cir.1992) (open fields do not warrant Fourth Amendment protection); *Dow Chemical Co. v. United States*, 476 U.S. 227,239,106 S.Ct. 1819,

trash constituted a search within the Fourth Amendment, there is no question that by placing items in a trash bin outside their home, knowing that the trash was going to be picked up by the Sanitation Department, the Rasmussons abandoned any privacy interest they may have had in the items. As such, any claims they are asserting which arise out of the trash pickups against any of the Defendants fail.

C. Fifth And Fourteenth Amendments

61. Plaintiffs' most encompassing complaint seems to be that they were the subjects of an investigation that failed to result in any charges. Plaintiffs complain that the investigation lasted too long, resulting in the loss of business and substantial interference in Plaintiffs' lives. While it is true that the investigation by the FTF did not result in any arrests or charges being brought against the Plaintiffs, Plaintiffs have failed at state a constitutional violation cognizable under § 1983/*Bivens* under either the Fifth or Fourteenth Amendments.

FN 166 (...continued)
1827, 90 L.Ed.2d 226 (1986) (Fourth Amendment does not apply to an aerial surveillance of a 2000 acre industrial complex because it is an open field); *United States v. Dunn*, 480 U.S. 294, 302-05, 107 S.Ct. 1134, 1140- 41, 94 L.Ed.2d 326 (1987) (officer may stand in field and flash light in defendant's barn because "there is no constitutional difference between police observations conducted while in a public place and while standing in the open fields"). The jurisprudence of the Fifth Circuit, see *United States v. Williams*, 581 F.2d 451 (5th Cir.), *cert. denied*, 440 U.S. 972, 99 S.Ct. 1537, 59 L.Ed.2d 789 (1978), holds that three factors are relevant in deciding whether an attachment to a residence falls within the definition of curtilage: (1) the distance between the place in question and the house; (2) whether the place is within a general enclosure that includes the house; and (3) the purpose or use of the questioned place. *United States v. Dunn*, 766 F.2d 880, 884 (5th Cir. 1985) (citing *Care v. United States*, 231 F.2d 22 (10th Cir. 1956), *rev'd on other grounds*, 480 U.S. 294, 107 S.Ct. 1134, 94 L.Ed.2d 326 (1987).

62. First, there is no constitutional right to be arrested at the point when either the person under investigation or the court deems that there is sufficient probable cause for arrest.[167] Law enforcement officers are not required to guess at their peril the precise moment at which they have probable cause to arrest a suspect, risking a violation of the Fourth Amendment if they act too soon, and a violation of the Sixth Amendment if they wait too long.[168] Law enforcement officers are under no constitutional duty to call a halt to a criminal investigation the moment they have the minimum evidence to establish probable cause, a quantum of evidence which may fall far short of the amount necessary to support a criminal conviction.[169] Such a requirement would punish the cautious officer who errs on the side of protecting a defendant's rights by requiring a stronger showing of probable cause than the court might deem necessary.[170]

63. Second, there is no constitutional right to be free from official investigation.[171] The *Jacobson* court held that "the mere fact the undercover investigation is started without reasonable suspicion does

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FN 167. *Hoffa v. United States*, 385 U.S. 293, 310, 87 S.Ct. 408, 417, 17 L.Ed.2d 374(1966); *United States v. Adekunle,* 2 F.2d 559, 591 (5th Cir. 1993).

FN 168. *Id.*

FN 169. *Hoffa*, 385 U.S. at 310, 87 S.Ct. at 417.

FN 170. *Adenkunle,* 2 F.2d at 591.

FN 171. *Hale v. Townley*, 45 F.3d 914, 920 (5th Cir. 1995); *United States v. Allibhai,* 939 F.2d 244, 249 (5th Cir. 199 1) *(quoting favorably from United States v. Jacobson,* 916 F.2d 467, 469 (8th Cir. 1990) *(en banc), cert. denied in part,* 499 U.S. 974, 111 S Ct 1618, 113 L.Ed.2d 716 (1991), *rev'd on other grounds,* 503 U.S. 40, 112 S.Ct 1535, 118 L.Ed.2d 174)).

not bar the conviction of those who rise to its bait.'"[172] Since the Fifth Circuit has expressly held that there is no constitutional right either to be free from investigation or to be arrested in the course, or at the conclusion, of the investigation, Plaintiffs have failed to establish the first prong of either the *Bivens* or the § 1983 analysis. As such, all Defendants who participated in the investigation of Plaintiffs are entitled to qualified immunity. Because the Plaintiffs have failed to establish the existence of a constitutional violation, Defendants who participated in the investigation are entitled to qualified immunity without the need for the court to determine whether Defendants' actions were objectively reasonable. The constitutionality of the November 22, 1993 search warrants and of the affidavits supporting the warrants is addressed in the final section of this Memorandum Opinion and Order.

X. DEFENDANTS

A. Supervisory Defendants

1) Carol Hallett, George J. Weise, and John E. Hensley

64. Defendant Hallett was Commissioner of the United States Customs Service from November 1989 to January 1993. Her immediate successor is Defendant Weise, who has served as Commissioner since May 1993. Defendant John E. Hensley, who is currently the Special Agent in Charge of the Los Angeles Field Division of the Customs Service, served as the Assistant Commissioner of the Office of Enforcement in the Customs Service at the time of the events in question. Plaintiffs have made the following allegations against these three Defendants:

> Weise, Hallett, and Hensley failed to supervise, failed to train, failed to discipline, failed to promulgate constitutional policies and procedures and they

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FN 172. *Jacobson*, 916 F.2d at 469.

> acquiesce, approved the harassment strategy that consisted of repeated slander against the Plaintiffs resulting in termination of contractual and employment relationships, and rewarded and promoted the agents for their bad acts carried out against Plaintiffs where said acts were contrary to clearly established law.

All three Defendants have sworn, under penalty of perjury, that they have no personal knowledge of the facts at hand. Although given every opportunity to do so, Plaintiffs have not presented any evidence in the summary judgment record to refute these declarations. Indeed, having read Plaintiffs' complaint, there is little doubt that Plaintiffs seek to hold these three Defendants vicariously liable for the acts of Customs agents.[173]

65. The law is very well settled that supervisory officials cannot be held vicariously liable for their subordinates' actions under § 1983,[174] or likewise, under *Bivens*. Supervising officials may be held liable only if: (1) they affirmatively participate in acts that cause constitutional deprivation; or (2) implement unconstitutional policies that causally result in plaintiff's injury.[175] Plaintiffs have failed to show that these Defendants acted in any way to violate their constitutional rights. It is clear that not one of the three affirmatively participated in any of the investigations concerning Plaintiffs, or even had any knowledge concerning the investigations. Plaintiffs' bald

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FN 173. According to the affidavit of Defendant Hensley, there are at least six levels of command from the agent working at the field office to the Assistant Commissioner.

FN 174. *See Monell*, 436 U.S. at 694, 98 S.Ct. at 2037; *Pierce v. Texas Dept Of Crim Justice, Inst Div.*, 37 F.3d 11446, 1150 (5th Cir. 1994); *Mouille*, 977 F.2d at 929 (5th Cir. 1992); *Thibodeaux v. Arceneaux*, 768 F.2d 737, 739 (5th Cir. 1985) *(per curiam)*.

FN 175. *Baker*, 75 F.3d at 199; *Mouille*, 977 F.2d at 929 (citations omitted)

allegations that Defendants have failed to institute constitutional policies, without specifying what those policies may have been or why the current policies violate Plaintiffs' constitutional rights, are not enough to overcome the defense of qualified immunity. The court finds that no genuine issues of fact exist as to Defendant Hallet's, Weise's and Hensley's liability to Plaintiffs. As such, summary judgment in favor of these three Defendants is proper.

2) Michael T. Lappe

66. Agent Lappe was the Special Agent in charge of the United States Customs Office in El Paso, Texas, from May 19,1989 through October 16,1994. During his tenure, the Customs Service participated in a large drug trafficking investigation of the Flores organization. He did not participate in the investigation directly, but was regularly briefed on its progress. Likewise, Agent Lappe did not directly participate in the investigation of the Rasmussons or Rasmark. Here, too, Agent Lappe was intermittently briefed on the progress of the investigation.

67. Agent Lappe's only direct participation in the investigation was the July 26, 1993 letter sent to Ford under his signature. Agent Lappe affied that it was his policy to review and sign all significant correspondence, and that the July 26th letter was prepared for his signature by Agent Frost and routed to him through the regular chain of command. Agent Lappe further affied that he had always known Agent Frost to be reliable and professional in his work and had no reason to question the information contained in the letter.

68. Plaintiff Gantkessy complains that Agent Lappe interfered with his employment at Ford by sending Ford a letter on July 26, 1993. The letter informed Ford that Gantkessy was possibly involved with the Rasmussons, who were then being investigated for violations of numerous federal statutes, and requested that Ford provide the Customs Service with documents of its transactions with Rasmark. The letter briefly outlined the evidence which had been collected up to that time and which indicated a conspiracy to commit fraud by Rasmark

and Gantkessy. The court does not see how the letter sent to Ford was a violation of Gantkessy's constitutional rights.[176] The letter does not unambiguously impute criminal conduct on Gantkessy, nor does it speculate on the possible outcome of the investigation. It simply sets forth facts within the possession of the Customs Service, several of which were provided by Gantkessy himself and asks Ford to provide documents of its dealings with Rasmark. A law enforcement agency is certainly permitted to follow all leads during an investigation, and setting forth the facts from which an investigation is proceeding, even if the investigation does not ultimately result in charges being brought against the suspects, is not a violation of the suspects' constitutional rights. Furthermore, as the court held earlier, Plaintiffs claims, if any, arising out of the letter lie in tort against the federal government under the FTCA and not against individual federal agents.[177] To the extent that Plaintiffs seek to hold Agent Lappe vicariously liable for his subordinates' actions, their claims against him are likewise dismissed.

3) Donald L Reay

69. Special Agent Reay was the Assistant Special Agent in Charge (ASAC) of the El Paso field office for approximately six years from 1990 until 1996. Agent Reay was only marginally involved, if at all, in the investigation of Plaintiffs, and has affirmed, under penalty of pedury, that he has no personal knowledge of the majority of Plaintiffs' allegations. He was not present at the execution of any of the search warrants, nor at any of the interviews involving Plaintiffs. It is obvious that Plaintiffs seek to hold Agent Reay vicariously liable for the actions of his subordinates. For reasons previously addressed in some detail, Plaintiffs' claims against Agent Reay under *Bivens* must fail. Insofar as Plaintiffs' seek to hold Agent Reay liable for his individual actions,

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FN 176. *See Cantu v. Rocha*, 77 F.3d 795, 809 (5th Cir. 1996).

FN 177. In a previous section, the court found that Plaintiffs alleged torts of defamation and interference with contractual and employment relations were not actionable under the FTCA.

Agent Reay is entitled to qualified immunity. Plaintiffs have neither alleged a violation of a constitutional right by Agent Reay, nor argued that Agent Reay acted in an objectively unreasonable manner at any time. As such, all claims against Agent Reay will be dismissed.

B. Defendants Involved in the *Flores* Case

70. Five of the Defendants to this suit had absolutely no involvement in the investigation of the Rasmussons under the auspices of the FTF. Their only connection to any of the events in question was their participation in the Flores investigation in the late-1980's early-1990's. Without exception, upon the termination of the Flores trial, none of the five agents had anything to do with either Flores or Mark Rasmusson. As concerns the statute of limitations for any causes of action against these Defendants, there is no question that Plaintiffs knew or should have known of these agents' role in the investigation at the time of the Flores trial. Thus, Plaintiffs' claims against these agents are untimely. More importantly, however, all of the agents who testified at the Flores trial are absolutely immune from civil liability arising from their testimony at trial.[178] Accordingly, not only are any possible claims asserted under *Bivens* against the following five Defendants time barred, Plaintiffs have failed to state any actionable claims against them. As such, all claims against the following five Defendants are dismissed.

1) Robert Martinez

71. Agent Martinez, a Special Agent with the Internal Revenue Service, was sued for violating the Plaintiffs' First, Fourth, Fifth and Fourteenth Amendment rights. Plaintiffs have not made any specific allegations as to how Agent Martinez violated their constitutional rights. In fact, Agent Martinez has never had any contacts with Plaintiffs whatsoever. In 1990, Agent Martinez was assigned to a

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FN 178. *Briscoe v. LaHue*, 460 U.S. 325, 329-30, 103 S.Ct. 1108, 1112-13, 75 L.Ed.2d 96 (1983).

task force investigating drug trafficking in the El Paso area. Specifically, the task-force was investigating Jesus Flores and his drug running operation. After Flores was indicted by an El Paso grand jury, Agent Martinez testified on behalf of the government at Flores's trial. That was the Agent's only involvement in any tangential matter noted in Plaintiffs' Third Amended Complaint. Agent Martinez was not involved in any investigation of the Plaintiffs, before or after Flores's conviction. For the reasons stated above, all claims asserted against Agent Martinez will be dismissed.

2) Elias P. Chavez

72. DEA Special Agent Elias P. Chavez has also been sued by the Plaintiffs under *Bivens* for violating their constitutional rights. Like Agent Martinez, Agent Chavez was involved in the Flores investigation in 1990. His role consisted of interviewing a number of individuals who either worked with Jesus Flores in the drug trafficking organization or else had evidence of activities of the Flores organization. Agent Chavez declared that he has had no contacts with any of the Plaintiffs since that time. Accordingly, Plaintiffs' claims against Agent Chavez are likewise barred by the statute of limitations and by absolute testimonial immunity.

3) Rafael Aguirre

73. DEA Special Agent Rafael Aguirre was assigned to the DEA El Paso District Office from April 1990 through June or July 1992. During that time, he served as group supervisor of an enforcement group. At the time of his arrival, several DEA agents from the El Paso office were involved in an ongoing investigation of Jesus Flores and his drug trafficking organization. As group supervisor, Agent Aguirre was required by DEA policy to review and sign all of the reports generated during the investigation. After Flores was convicted, Agent Aguirre had no further role in investigating Flores associates or any of the Plaintiffs in the case at hand. Accordingly, Plaintiffs' claims against Agent Aguirre are untimely and will be dismissed.

4) Thomas P. Lenox

74. DEA Special Agent Thomas P. Lenox was assigned to DEA's El Paso District Office from February 1991 through March 1991. During that time, he participated in the Organized Crime Drug Enforcement Task Force (OCDETF) investigation of Jesus Flores and his organization. In the course of that investigation, Task Force agents became aware that the Flores organization was using Rasmark Jet Charter, Inc. for its transportation needs. The agents also learned that Rasmark treated the Flores organization differently from its other customers, by not keeping documentation of flights and by dealing primarily in cash, for instance. In September 1990, a federal grand jury indicted Flores and several of his associates on drug trafficking charges. Mark Rasmusson was among the accused. On September 26, 1990, Agent Lenox, along with Agent Perkins, contacted Mr. Rasmusson and his attorney to inform them that there was a wan-ant out for Mr. Rasmusson's arrest. Since Agent Lenox left El Paso in March 1991, he had almost nothing to do with the Flores investigation or the subsequent investigation of the Plaintiffs. Accordingly, any and all claims against Agent Lenox are barred by the applicable statute of limitations.

5) Steven Perkins

75. DEA Special Agent Steven Perkins was assigned to DEA's El Paso District Office from Austin 1987 until March 1991. While there, he participated in the investigation of the drug trafficking operation run by Jesus Flores and his associates. At some point during the investigation, evidence surfaced that the Flores organization was using Rasmark for its transportation needs. Plaintiff Mark Rasmusson then became implicated in the investigation, but was never its primary focus. An El Paso grand jury handed down nine indictments as a result of the Flores investigation. Mr. Rasmusson was among those indicted. He was charged with one count of aiding and abetting in drug trafficking activities. As noted earlier, Agents Lenox and Perkins contacted Mr. Rasmusson and his attorney to inform them that a warrant had been issued for Mr. Rasmusson's arrest. Mr.

Rasmusson turned himself in the next day. Agent Perkins was transferred to Casper, Wyoming prior to the commencement of the Flores trial. He returned to El Paso for a portion of the trial and the sentencing, but did not participate in any further investigations of the Flores associates or of the Plaintiffs. Since Agent Perkins's involvement has been known to the Plaintiffs since at least 1991, their claims against him are barred by the statute of limitations.

76. Plaintiffs have also alleged that Agent Perkins falsified his DEA-6 reports, which served to secure Mark Rasmusson's indictment in 1990. If Plaintiffs are asserting a claim for malicious prosecution,[179] their claim is barred by the applicable statute of limitations.[180] If Mr. Rasmusson is alleging a violation of his constitutional right to be free from an investigation, his claim likewise fails.[181]

FN 179. In order to prevail on a malicious prosecution claim in Texas, the Fifth Circuit requires the plaintiff to show that (1) a criminal action was commenced against him; (2) the prosecution was caused by the Defendant or with his aid; (3) the action terminated in the Plaintiff s favor; (4) the Plaintiff was innocent; (5) the Defendant acted without probable cause; (6) the Defendant acted with malice; and (7) the criminal proceeding damaged the Plaintiff. *Taylor v. Gregg*, 36 F.3d 453, 455 (5th Cir. 1994) (citations omitted).

FN 180. *See Toranto v. Wall*, 891 S.W.2d 3, 6 (Tex.App.--Texarkana 1994, no writ) (noting that a civil action for malicious prosecution is governed by a two year statute of limitations).

FN 181. There is no constitutional right to be free from an official investigation. *Hale v. Townley*, 45 F.3d 914, 920 (5th Cir. 1995); *United States v. Allibhai*, 939 F.2d 244, 249 (5th Cir. 1991) (citations omitted), *cert. denied*, 502 U.S. 1072, 112 S.Ct. 967, 117 L.Ed.2d 133 (1992).

C. Local Entity Defendants

1) El Paso Police Department and El Paso County Sheriff's Department

77. The capacity of an entity such as a sheriffs department or a police department to sue or be sued "shall be determined by the law of the state in which the district court is held."[182] In Texas, county sheriffs and police departments generally are not legal entities capable of being sued, absent express action by the political entities under which they exist (the county, in the case of the sheriff s department; the city, in the case of the police department) "to grant the servient agency with jural authority."[183] Unless the superior political entity takes explicit steps to grant the servient agency with jural authority, the agency cannot engage in any litigation except in concert with the governmental unit itself.[184] While *Darby* dealt specifically with a police department, the Fifth Circuit's reasoning has been equally applied to suits against sheriff s departments.[185]

FN 182. FED.R.Civ.P. 17(b).

FN 183. *Jacobs v. Port Neches Police Dept.*, 915 F.Supp. 842, 843 (E.D.Tex. 1996) (citing *Darby v. Pasadena Police Dep't,* 939 F.2d 311, 313 (5th Cir.1991)).

FN 184. *Id.* at 313; *see also Darby,* 939 F.2d at 313 (noting that if a governmental subdivision does not have the capacity for independent legal action, it is incapable of being joined as a defendant).

FN 185. *See, e.g., Rideau v. Jefferson Cty.*, 899 F.Supp. 298, 301 (E.D.Tex. 1995) ("The United States Court of Appeals for the Fifth Circuit has determined that police and sheriff s departments are governmental subdivisions without capacity for independent legal action.") (citing *Darby v. Pasadena Police Dept,* 939 F.2d 311 (5th Cir.1991); Alcala v. Dallas County Sheriff, 988 F.2d 1210 (5th Cir.1993)).

78. The City of El Paso is a home rule municipality. The Texas Code grants all authority to organize a police force to the city itself,[186] and the Home Rule Charter of the City of El Paso in turn reserves to the municipality itself the right to sue and to be sued.[187] Likewise, the El Paso Sheriff s Department is not a separate legal entity, but is a governmental subdivision of El Paso County.[188] In addition, there is no indication that El Paso County has taken explicit steps to endow the Sheriff s Department with jural authority. Because there is no indication that the either the El Paso County Sheriff's Department or the El Paso Police Department enjoy a separate legal existence, they are not proper parties to this lawsuit, and all causes of action against them will be dismissed.

79. In cases such as this, where an improper political entity has been sued, and is subsequently dismissed, the *Darby* court held that, under most circumstances, the district court should grant plaintiffs leave to amend their complaint and sue the proper party, especially when the proper defendant was on notice all along and is not prejudiced by being named a party defendant. Here, the proper parties in a suit against the Sheriff s Department and the Police Department are El Paso County and the City of El Paso, respectively. Since these two entities have already been named as Defendants in the case *sub judice*, there is no need for the court to decide whether Plaintiffs should be granted leave to amend their complaint.

FN 186. *See* TEX. LOCAL GOV'T CODE ANN. § 341.003.

FN 187. *See* Affidavit of Alternate City Clerk Gloria T. Alvarado in Support of Motion for Summary Judgment ("Tbe City of El Paso and the El Paso City Code and its charter do not grant to the El Paso Police Department the right to sue or be sued, such litigation being reserved for the City of El Paso itself.").

FN 188. *See generally* TEX. CONST. ART. 5, § 23; TEX. LOCAL GOV'T CODE ANN. § 85.001 et seq.

2) El Paso County Sheriff Leo Samaniego and Chief of Police Russ Leach

80. In *Kentucky v. Graham*,[189] the United States Supreme Court sought to eliminate lingering confusion about the distinction between personal- and official-capacity suits.[190] The *Graham* Court emphasized that official-capacity suits "'generally represent only another way of pleading an action against an entity of which an officer is an agent.'"[191] Suits against state officials in their official capacity, therefore, should be treated as suits against the State.[192] Similarly, suit against El Paso County Sheriff Leo Samaniego, in his official capacity, should be treated as a claim against El Paso County,[193] and suit against Chief of Police Russ Leach, in his official capacity, should be treated as a claim against the City of El Paso. Since both El Paso County and the City of El Paso are party Defendants to this law suit, it serves no legitimate purpose whatsoever to retain the two top law enforcement officials in their official capacities as party Defendants. Accordingly, all claims brought against El Paso County Sheriff Leo Samaniego and all claims brought against Chief of Police Russ Leach will be dismissed.

3) City of El Paso and El Paso County

81. Plaintiffs have alleged that El Paso County had an unconstitutional policy in place governing cooperation of the Sheriff s

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FN 189. 473 U.S. 159, 105 S.Ct. 3099, 87 L.Ed.2d 114 (1985).

FN 190. *Hafer v. Melo*, 502 U.S. 21, 25, 112 S.Ct. 358, 116 L.Ed.2d 301 (1992).

FN 191. Id. (citing Graham, 473 U.S. at 165, 105 S.Ct. at 3104 (quoting Monell, 436 U.S. at 690, n.55, 98 S.Ct. at 2035, n. 55)).

FN 192. *Id.*

FN 193. *See Brooks*, 84 F.3d at 165 (5th Cir. 1996).

Department in multi-agency drug task forces. This allegation is discussed in more detail below. Although Plaintiffs also allege that the City of El Paso also has unconstitutional policies in place, Plaintiffs were unable to point to a single City Ordinance or rule with which they take issue. In addition to alleging the existence of unconstitutional policies, Plaintiffs complain that both the Sheriff s Department and the Police Department failed to adequately train and supervise their officers. Because neither the Sheriff s Department nor the Police Department are proper parties to this lawsuit for reasons set out above, the failure to train and supervise claim will be treated as a claim against the County and City, respectively.

82. At the April 21st hearing on all outstanding motions, the court asked Plaintiffs to point out what policy or custom of the County they contended was unconstitutional, or whose enforcement violated their constitutional rights. Plaintiffs pointed the court to the standards of conduct governing the El Paso County Metro Narcotics Task Force. Like the FTF, the County Metro Narcotics Task Force is a multi-agency task force composed of local state and federal agencies. The County Metro Narcotics Task Force, however, had nothing to do with investigating Plaintiffs. Absent any sort of direct injury to Plaintiffs arising out of the actions of the County Metro Narcotics Task Force, Plaintiffs have no standing to challenge any possible constitutional violations. Even if Plaintiffs did have standing, assuming that the Standards of Conduct were promulgated by the County, the court fails to find that any provision of the Standards is unconstitutional. Other than this one document, Plaintiffs have failed to point to any County policy or practice which governed the participation of the Sheriff's Department in the FTF and was unconstitutional as adopted or applied. Accordingly, all claims against the City and County of El Paso on grounds that the two had in place unconstitutional policies or customs will be dismissed.

83. Plaintiffs have next sought to premise liability on the basis of failure to supervise or train. Municipal liability under § 1983 for failure to train or supervise was outlined by the Supreme Court in

Canton v. Harris County.[194] The *Canton* court first reaffirmed that the initial inquiry in any case- alleging municipal liability under § 1983 is the question whether there is a direct causal link between a municipal policy or custom and the alleged constitutional deprivation.[195] *Canton* held that the inadequacy of police training may serve as the basis for § 1983 liability only where the failure to train amounts to deliberate indifference to the rights of persons with whom the police come into contact.[196] The Court reiterated the admonitions it gave in *Monell*[197] and Polk Cty. v. Dodson[198] that a municipality can be liable under § 1983 only where its policies are the "moving force [behind] the constitutional violation." Only where a municipality's failure to train its employees in a relevant respect evidences a "deliberate indifference" to the rights of its inhabitants can such a shortcoming be properly thought of as a city "policy or custom" that is actionable under § 1983.[199] Only where a failure to train reflects a "deliberate" or "conscious" choice by a municipality--a "policy" as defined by the Supreme Court's prior cases--can a city be liable for such failure under § 1983.[200] It is worth quoting at length the following passage from the Court's opinion, as it succinctly sets forth the law of municipal liability for failure to train:

> *Monell's* rule that a city is not liable under § 1983 unless a municipal policy causes a constitutional deprivation will not be satisfied by merely alleging that

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FN 194. 489 U.S. 378, 103 L.Ed.2d 412, 109 S.Ct. 1197 (1989).

FN 195. *Id.* at 385, 103 L.Ed.2d at 424.

FN 196. *Id.* at 388, 103 L.Ed.2d at 426.

FN 197. 436 U.S. at 694, 56 L.Ed.2d at 611.

FN 198. 454 U.S. 312, 326, 70 L.Ed.2d 509, 102 S.Ct. 445 (1981).

FN 199. *Canton*, 489 U.S. at 389, 103 L.Ed.2d at 426-27.

FN 200. *Id.* at 389, 103 L.Ed.2d at 427.

> the existing training program for a class of employee's, such as police officers, represents a policy for which the city is responsible. That much may be true. The issue in a case like this one, however, is whether that training program is adequate; and if it is not, the question becomes whether such inadequate training can justifiably be said to represent "city policy. It may seem contrary to common sense to assert that a municipality will actually have a policy of not taking reasonable steps to train its employees. But is may happen that in light of the duties assigned to specific officers or employees the need for more or different training is so obvious, and the inadequacy so likely to result in the violation of constitutional rights, that the policymakers of the city can reasonably be said to have been deliberately indifferent to the need.[201]

It is not enough for Plaintiffs to simply allege that either the City or the County had an inadequate training program. Plaintiff s must not only point to alleged inadequacies, but must prove that any deficiencies in training actually caused the complained of injuries.[202] Finally, the fact that a particular officer may be unsatisfactorily trained will not alone suffice to fasten liability on the City or County, for the officer's shortcomings may have resulted from factors other than a faulty training program.[203] Plaintiffs have been unable to point to any specific deficiencies in either the City's or County's training programs of its law enforcement officers. Mere allegations of inadequate training, without more, are not enough to overcome summary judgment. Accordingly, Plaintiffs' failure to train complaint against the City and County of El Paso will be dismissed.

FN 201. *Id.* at 389-90, 103 L.Ed.2d at 427 (footnotes omitted).

FN 202. Id. at 391, 103 L.Ed.2d at 428.

FN 203. *Id.* at 390-91, 103 L.Ed.2d at 428.

84. Plaintiffs have also alleged a failure-to-supervise claim against both the County and City of El Paso. To plead a valid failure-to-supervise claim, Plaintiffs must allege facts sufficient to present the following elements: (1) the City and County Defendants learned of facts or a pattern of inappropriate conduct by its law enforcement officers that points plainly toward the conclusion that the subordinates violated Plaintiffs' constitutional rights; (2) the City and County Defendants demonstrated deliberate indifference toward the constitutional rights of the Plaintiffs' by failing to take action that was obviously needed to prevent or stop the abuse; and (3) such failure caused a constitutional injury to the Plaintiffs.[204] Other than making conclusory allegations that the County and City failed to properly supervise its law enforcement officers, Plaintiffs have not alleged any set of facts which would show that either the City or the County knew of unconstitutional conduct by its law enforcement officers, or, even if the City or County knew of alleged unconstitutional conduct, they were deliberately indifferent to Plaintiffs' plight. Because Plaintiffs' have been unable to show the existence of a genuine issue of material fact as to any claim against the County or City of El Paso, summary judgment is proper in favor of both entities.

D. El Paso Police Defendants

1) George Salas

85. Officer Salas has been employed as a uniformed patrolman by the El Paso Police Department since 1977. In January 1992, while he was working as a uniformed patrolman, Officer Salas was dispatched to Rasmark corporate offices to receive a report about a threatening telephone call. He was met by Mark and Debra

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FN 204. *See, e.g., Doe v. Hillsboro Indep. Sch. Dist.*, 81 F.3d 1391, 1404 (5th Cir. 1996) (citing *Hagan v. Houston Indep. Sch Dist.*, 51 F.3d 48, 51 (5th Cir. 1 995); *Doe v. Taylor Indep. Sch. Dist.*, 15 F.3d 443, 454 (5th Cir.), *cert. denied sub nom. Lankford v. Doe*, 513 U.S. 70, 115 S.Ct. 70, 130 L.Ed.2d 25 (1994).

Rasmusson, who were both very disturbed by a message that had been left on their answering machine. Officer Salas took down all of the information and told the two to be careful. Before he left, Debra Rasmusson asked for his telephone number.

86. According to Officer Salas's affidavit, he received a telephone call from Ms. Rasmusson two weeks later. Ms. Rasmusson inquired whether he would be available for private security work. In the next three months, Officer Salas provided private security services about a half-a-dozen times. Then, on May 23, 1992, Officer Salas received a telephone call from Ms. Rasmusson, who told the Officer that she was afraid for her life because of her husband, and that she had documents that could put him away for a long time. Officer Salas, who had previously been introduced to Agent Frost, the lead agent leading the Rasmusson investigation, immediately telephoned the Agent and arranged for a meeting. He then picked up Ms. Rasmusson and her son and drove them to a pre-arranged meeting place. Once everybody had congregated, the procession moved to the Customs Offices, where Ms. Rasmusson met with Agent Frost. Officer Salas did not sit in on that conversation. Apparently, the conversation went badly because Ms. Rasmusson stormed out of the building and intentionally triggered the fire alarm on her way out. She refused to have Officer Salas drive her home and that was the last contact the two of them had until the summer of 1995, when Ms. Rasmusson telephoned and confessed that she had an alcohol and drug problem. Officer Salas simply suggested that she seek help from Charter Hospital.

87. Officer Salas further affied that he did not participate in any FTF activities. He was never called upon to undertake surveillance of the Plaintiffs or their place of business, was never asked to assist in interviewing any individual witnesses and never participated in the execution of search warrants. His only connection to Plaintiffs is that he served as Ms. Rasmusson's body guard on several occasions. Still, Plaintiffs seek to ensnare Officer Salas in a web of conspiracy they have cast far and wide.

88. Debra Rasmusson paints a different story of Officer Salas's involvement in the case. According to Ms. Rasmusson, she and

her husband had received a threatening telephone message at their office and had reported the incident to the El Paso Police Department. Officer Salas and his partner came out to investigate. Officer Salas then gave his telephone number to Ms. Rasmusson, who contacted the Officer a few weeks later to request private security services. Here is where the stories diverge. According to Ms. Rasmusson, Officer Was came by her residence unannounced a few days after the telephone call. One thing led to another and the two became involved in an illicit affair The affair lasted until May 1992. Ms. Rasmusson contends that on one occasion, while Officer Salas was at her residence, he received a call on his beeper from the office. Apparently not wanting his supervisor to know he was at the Rasmusson residence, Officer Salas asked Debra Rasmusson to borrow her car so that he could make a telephone call from a convenience store down the street. Ms. Rasmusson obliged and gave Officer Salas the keys to her car. The key chain which held the car keys also contained keys to the house and the office. Ms. Rasmusson contends that Officer Salas took that opportunity to make a copy of the house and office keys. This is the Plaintiffs' explanation as to how certain documents were obtained by Task Force members. Ms. Rasmusson also states that at the May interview with the Customs agents, Agent Frost told her that Officer Salas was a mole spying on the Rasmussons for the FTF.

89. While there is absolutely no evidence in the record, other than Mrs. Rasmusson's own assertions, substantiating the events just relayed, even if everything Mrs. Rasmusson states is true, Plaintiffs have still failed to state a claim under § 1983 against Officer Salas. Plaintiffs have not alleged any acts against Officer Salas that constitute a violation of their constitutional or statutory rights. Thus, Officer Salas is entitled to qualified immunity against any claims arising out of his conduct as a police officer. If Plaintiffs' claims against the Officer lie in tort, those claims, as well as all claims brought under § 1983, are time barred. Regardless of whose version of events is believed, the last contact Debra Rasmusson had with Officer Salas was in May 1992. Thus, all claims brought against him are untimely.

2) James Holland

90. Officer Holland has been an officer with the El Paso Police Department since January 6, 1972. From January 1993 until April 1995, Officer Holland was the El Paso Police Department's representative on the Financial Task Force investigating money laundering in the El Paso area. While on the Task Force, he participated in surveillance operations and aided in the execution of search warrants. On three occasions, Officer Holland picked up trash collected from the Rasmusson residence. This was accomplished not by rummaging through their trash bin, but by waiting for the trash to be collected by the sanitation department, and then getting it from them down the road.[205] Officer Holland also participated in executing a search warrant on November 22, 1993 at the Rasmusson residence. Not only have Plaintiffs failed to allege a constitutional violation against Officer Holland, Plaintiffs have failed to timely bring any claims they may have had against him. Suit against Officer Holland was not filed until May 10, 1996, more than two years after the last act alleged against him by the Plaintiffs in their complaint. There is no question that Plaintiffs knew or should have known the officers involved in the execution of the search warrants, thereby starting the running of the statute of limitations.

E. Deputy Sheriff's Defendants

1) Neil Baker

91. Sheriff s Deputy Baker was temporarily assigned by the Sheriff s Department to the FTF. While working on the Task Force, Deputy Baker conducted surveillance and retrieved trash from the sanitation department. He also participated in the execution of the November 22, 1993 search warrant at Rasmark corporate offices. In regard to the trash pick-up, Plaintiffs have not alleged a constitutional

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FN 205. The court held, *supra*, that this activity was not a violation of Plaintiffs' Fourth Amendment rights.

violation and, as such, Deputy Baker is entitled to qualified immunity from suit. Even if the act did constitute a constitutional violation, which it does not, there is nothing in the record to controvert the fact that Deputy Baker acted in an objectively reasonable manner. Plaintiffs have likewise failed to allege a constitutional violation with respect to the execution of the November 23, 1993 search warrants.[206] But even if Plaintiffs could successfully challenge the basis on which the warrant was obtained, all individuals involved in the execution of the search warrants have affied that the warrant was facially valid. These officers, including Deputy Baker, are entitled to qualified immunity for their reliance on a facially valid search warrant issued by a neutral magistrate. Accordingly, all claims against Deputy Baker will be dismissed.

2) Jerry Keith

92. Like Deputy Baker, Deputy Keith was temporarily assigned by the El Paso Sheriff's Department to work on the Financial Task Force. And, like Deputy Baker, Deputy Keith performed some surveillance work and participated in trash pick-ups. He did not, however, participate in executing any of the search warrants on November 22, 1993. Plaintiffs have failed to state any constitutional or statutory violations against Deputy Keith. As such, Deputy Keith is entitled to qualified immunity from suit. Accordingly, all claims against him will be dismissed.

F. Private Defendants

1) Gail Beach and Chris Hines

93. According to Plaintiffs' complaint, Aero Freight, Inc. acted as a freight broker for Rasmark Jet Charters, Inc. from 1984 through 1987. Defendant Beach is the owner of Aero Freight, Inc. and Defendant Hines is one of its employees. Apparently, Aero Freight had

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FN 206. See Section H, *infra*.

made Rasmark its exclusive carrier, but terminated that exclusive relationship when it bought its own Lear jet. Plaintiffs complain that Defendants Hines and Beach provided false information to law enforcement officers in order to "do in" their competitor, Rasmark. Plaintiffs' complaint reads:

> On March 9, 1993, Defendants Frost and Mills ... conducted an interview with Gail Beech (sic), owner of Aero Freight of El Paso, a direct competitor, and former business associate, of Rasmark. Majority, if not all, of the information that Gail Beach told to Frost and Mills were based on rumors and disinformation that she had heard, mainly from former, disgruntled employees. Beach told the agents that her information was based largely on rumors.

Plaintiffs complain that Defendant Frost then used the information given him by Defendant Beach in an affidavit supporting his request for a search warrant on November 19, 1993. Task Force agents also met with Defendant Hines on March 16, 1993. Plaintiffs allege that Defendant Hines engaged in misinformation and rumormongering, and that his statements also made their way into Agent Frost's November 19, 1993 affidavits.

94. Both Defendants Beach and Hines have signed affidavits stating that they met with Task Force agents only one time each, on March 9 and March 16, 1993 respectively. Furthermore, both Defendants have affied that, at all times, they responded truthfully to the questions posed and provided information in good faith. Customs Agents Schroeder and Frost, also Defendants in this lawsuit, have corroborated Beach's and Hines's affirmations. Agent Schroeder, who interviewed Defendant Hines on March 16, 1993, affied that he called Hines five to six times after the interview to clarify details previously discussed and that no contact with Hines was made after July 1993. Likewise, Agent Frost, who interviewed Defendant Beach, affied that other than a few post-interview calls to clarify details of their conversation, no contact with Beach was made after September 1993. Plaintiffs' complaint was filed on November 21, 1995, more than two

years after the absolutely last contact agents had with Defendants Beach and Hines.

95. For limitations purposes, the question becomes when Plaintiffs knew or should have known of the complained of acts. This question is answered by Mark Rasmusson himself. In his affidavit, Mr. Rasmusson states, in several places, that he was aware that Defendant Beach was furnishing false, misleading and slanderous information to Customs agents. Paragraph 23 of Mr. Rasmusson's affidavit reads:

> My employees and my business competitors were interviewed. One competitor, Gail Beech (sic), owner of Aero Freight, used these interviews to furnish false, misleading, and slanderous information about me and Rasmark to USCS and later to officials of Ford Motor Co., one of my major customers.

Mr. Rasmusson makes similar allegations in paragraphs 10, 27 and 39. The chronology of the paragraphs in his affidavit leads the court to conclude that Mark Rasmusson knew as early as 1989 that Gail Beach was making allegedly slanderous statements to Customs agents concerning Rasmark. If Plaintiffs seek to hold Beach and Hines liable for defamation, their claim is time barred.[207] If Plaintiffs seek to hold Beach and Hines liable for providing information to Customs agents in the course of an investigation, the two are immune from civil liability for their actions under 19 U.S.C. § 507(b). That section reads, in part:

> Any person other than an officer or employee of the United States who renders assistance in good faith upon the request of a customs officer shall not be held liable for any civil damages as a result of rendering such assistance if the assisting person acts as an

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FN 207. Suits for defamation must be brought within on year of the accrual of the cause of action. See TEX. CIV. PRAC. & REm. CODE § 16.002.

> ordinary, reasonably prudent person would have acted under the same or similar circumstances.

Both Defendants Beach and Hines have affied that they responded to the inquiries truthfully and provided information in good faith. Plaintiffs' uncorroborated allegations that Beach and Hines engaged in rnisinformation, without more, is certainly not enough to defeat Defendants' affirmations that they acted as ordinary, reasonably prudent individuals. Thus, notwithstanding the fact that Plaintiffs' claims against Beach and Hines fail on limitations grounds, Beach and Hines are likewise immune from civil liability under 19 U.S.C. § 507(b).

2) Aero Freight, Inc.

96. Plaintiffs have named Aero Freight, Inc. as a party Defendant to the suit, but have failed to allege any causes of action against it. Accordingly, Aero Freight, Inc. is dismissed from the case on grounds that no claims have been asserted against it.

G. Defendants Involved in the Financial Task Force (FTF)

1) Fonda Hivick

97. IRS Special Agent Fonda Hivick was, for a time, assigned to the IRS Criminal Investigation Division in El Paso. While there, Agent Hivick's job was to identify and investigate individuals suspected of violating tax laws. From April 1992 through February 1993, Agent Hivick was assigned to work with the Organized Crime Drug Enforcement Task Force (OCDETF) investigating money laundering between the United States and Mexico. A portion of the investigation focused on Mark Rasmusson and Rasmark Jet Charter. Agent Hivick participated in the investigation of Mr. Rasmusson and Rasmark in the following ways:

1) On May 27, 1992, Agent Hivick was present when Agent Frost opened the box of records obtained from Debra Rasmusson

pursuant to a search warrant. She prepared an inventory of items found in the box and gave it to Agent Frost.

2) On June 11, 1992, Agent Hivick made a cursory examination of the records but prepared no work papers.

3) On August 20, 1992, Agent Hivick conducted a brief surveillance of Rasmark Jet Charter.

4) On August 24, 1992 and August 26, 1992, Agent Hivick retrieved information from The Treasury Enforcement Communication System (TECS) concerning international flights made by Rasmark Jet Charter aircraft.

5) On December 8, 1992, Agent Hivick and Agent Seals interviewed Mr. Rasmusson at his office concerning a round trip charter flight to the Cayman Islands.

6) On June 8, 1993, Agent Hivick was present at the United States Attorney's Office in El Paso debriefing an individual pursuant to a proposed plea agreement.

7) On November 22, 1993, Agent Hivick was assigned to the search team during the execution of a search warrant at Rasmark Jet Charters. She was one of approximately three agents who searched Mark Rasmusson's office at Rasmark. Agent Hivick unequivocally denies ever stating to anyone in the course of the investigation that Rasmark was a front corporation for money laundering or that Mark Rasmusson was a known cocaine dealer.

98. As was earlier established, Plaintiffs have no constitutional right to be free from an investigation.[208] Plaintiffs certainly do have a constitutional right to be free from unreasonable searches and seizures, but they have failed to establish that the

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FN 208. *See, e.g., Cantu v. R ocha*, 77 F.3d 795, 808 (5th Cir. 1996).

execution of the November 22, 1993 search warrants constituted a violation of their Fourth Amendment rights.[209] Nor have the Plaintiffs proffered any evidence to refute the fact that Agent Hivick at all times acted as would a reasonable agent under the circumstances. As such, Agent Hivick is entitled to qualified immunity from suit on all claims against her. Mere conclusory allegations and bald assertions are insufficient to overcome Agent Hivick's qualified immunity. With respect to the execution of the search warrant, an officer will be immune from liability unless, "on an objective basis," it is obvious that no reasonably competent officer could have concluded that a warrant should issue.[210] All officers engaged in the execution of the two search warrants have affied that the warrant, on its face, appeared to be validly issued. Therefore, the court cannot conclude that no reasonably competent officer could have concluded that a warrant should issue. Plaintiffs' bald allegations that they were the victims of a conspiracy, of which Agent Hivick was a participant, likewise cannot overcome the immunity defense.[211] Thus, all claims against Agent Hivick are dismissed on grounds of qualified immunity.

2) Walter J. King

99. Agent King was a Special Agent with the Customs Service in El Paso from April 1987 to December 1, 1996. During that time, he was assigned to the Financial Investigations Group, which at times was called upon to provide support to the Financial Task Force. Agent King was intermittently assigned to the FTF to conduct surveillance at various locations during FTF's investigation of the Rasmussons and of Rasmark. On November 22, 1993, Agent King was

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FN 209. *See* Section H, *infra*

FN 210. *Streetman*, 918 F.2d at 556 (5th Cir. 1990) (quoting *Malley, 475 U.S. at 341, 106 S.Ct. at 1096).*

FN 211. *See Streetman*, 918 F.2d at 556; *Lynch v. Cannatella,* 810 F.2d 1363, 1370 (5th Cir. 1987) ("Bald allegations that a conspiracy existed are insufficient.").

assigned to assist the FTF in executing a search warrant at Rasmark's corporate offices. His job was to photograph the evidence seized. The camera malfunctioned, however, and Agent King spent his time guarding the evidence. He did not participate in the execution of the search warrant at the Rasmusson residence. Plaintiffs have not stated a constitutional violation against Agent King. In addition, as the court noted in discussing the charges against Agent Hivick, an officer is immune from liability arising from the execution of a search warrant unless, on an objective basis, it is obvious that no reasonably competent officer could have concluded that a warrant should issue.[212] Such was not the case here. Accordingly, the claims against Agent King are dismissed on grounds of qualified immunity.

3) Joe L. Acosta

100. FBI Special Agent Joe L. Acosta has been assigned to the El Paso Division of the FBI since January 1992. He was designated by the FBI as its representative on the Organized Crime Drug Enforcement Task Force (OCDETF) in July 1992. While on the Task Force, Agent Acosta's role in investigating the Rasmussons was minimal. He passed along information, verbatim, from an FBI informant to Task Force members. That information made its way into the affidavits supporting the applications for the two November 22, 1993 search warrants.

101. Agent Acosta, along with several other Task Force agents, was present at the Rasmark hanger on June 1, 1993, where the agents unsuccessfully sought to interview a Rasmark pilot. He was also present on June 22, 1993 in Plaintiff Gantkessy's office where several Task Force members interviewed Gantkessy concerning his possible involvement with Rasmark. During the execution of the November 22, 1993 search warrant, Agent Acosta's job was to videotape the search locations before and after the search. He did not seize any evidence during the search. Aside form alleging that Agent Acosta participated

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FN 212. *See Streetman*, 918 F.2d at 556.

in a conspiracy, Plaintiffs have failed to allege any violations of their constitutional rights attributable to Agent Acosta. Neither the interview of a Rasmark pilot at the tarmac, nor the interview of Gantkessy, nor the videotaping of the premises to be searched pursuant to a warrant is violative of Plaintiffs constitutional rights. As such, Agent Acosta is entitled to qualified immunity.

4) Eric E. Mills

102. Senior Special Agent Eric Mills has been with the Customs Service in El Paso since November 1991. In September 1992, he was assigned to coordinate and oversee a group of Special Agents conducting surveillance of Rasmark Jet Charters. Agent Mills was present on May 23, 1992 when Debra Rasmusson was interviewed. He was also present at the Ysleta Port of Entry on November 10, 1992 when Customs Inspectors seized Debra Rasmusson's vehicle. Agent Mills declared, under penalty of perjury, that he never fabricated any evidence, never took part in any sham investigation, never was part of any conspiracy, and never had any contact with bank officers or employees regarding Plaintiffs. Plaintiffs have failed to allege a violation of any constitutional rights against Agent Mills. There is certainly no constitutional right to be free from surveillance in the course of an ongoing investigation. And anything else Agent Mills did, he did in an objectively reasonable manner and is entitled to qualified immunity. Plaintiffs have not put forth any evidence to overcome Agent Mills's claim of qualified immunity. Separately, Plaintiffs have failed to allege any claims against Agent Mills within the requisite statute of limitations period. As such, Plaintiffs' claims against him are also barred by the statute of limitations.

5) Larry K. Brown

103. Customs Service Special Agent Larry K. Brown was assigned to a 45 day detail at the Customs Service office in El Paso from May 17, 1993 to June 30, 1993. While there, he was assigned to assist in an ongoing Organized Crime Drug Enforcement Task Force (OCDETF) investigation. He participated in surveillance

and one garbage pick up. He was also present at the interview of Gantkessy at Gantkessy's place of employment. Agent Brown affirmed, under penalty of perjury, that he had never participated in any conspiracy nor did anything illegal in the course of the investigation. Plaintiffs have failed to allege a violation of any of their constitutional rights against Agent Brown. Nor have the Plaintiffs brought forth any evidence to refute the fact that, at all times, Agent Brown acted as would an objectively reasonable agent. As such, Agent Brown is entitled to qualified immunity from suit.

6) Michael Wilezewski

104. Agent Wilczewski is currently a Group Supervisor with the Office of Investigations, United States Customs Service, in El Paso, Texas. He has held that position since 1989. In February 1992, Agent Wilczewski was reassigned to the position of Currency Group Supervisor, under which the Financial Task Force (FTF) was organized. Agent Wilczewski's supervision of the FTF consisted of attending regularly scheduled meetings and conferences; routinely reviewing all interim or significant incident reports; discussing with Senior Special Agent Frost all proposed law enforcement activities, and frequently being physically present to observe the activities of law enforcement officers in connection with the investigation. Agent Wilczewski was present on May 24, 1992 at the Customs Service offices where Debra Rasmusson was interviewed. He was also present during the execution of the November 22, 1993 search warrants at both the Rasmusson residence and Rasmark's corporate offices.

105. Insofar as Plaintiffs seek to hold Agent Wilczewki vicariously liable for the acts of his subordinates, their claims fail for reasons already discussed. All of the Agent's other actions are protected by qualified immunity. Once again, Plaintiffs' bald allegations are not enough to overcome the qualified immunity defense, especially when such embellishments are denied under penalty of perjury by Agents familiar with the specific facts.

7) Fred J. Schroeder

106. Senior Special Agent Fred J. Schroeder has been employed as an investigator with the United States Customs Service in El Paso since 1987. From January 1993 to February 1994, he was assigned to the FTF, under the direction of Agent Frost, in connection with the investigation of money laundering activities in the El Paso area. Agent Schroeder served as a team leader for the Rasmusson portion of the investigation. In the course of the investigation, Agent Schroeder wrote close to 100 reports covering such items as the retrieval of residence trash, surveillance of the Rasmusson residence and of Rasmark corporate offices, and interviews of various witnesses. On November 22, 1993, Agent Schroeder supervised the execution of the search warrant at the Rasmusson residence. He was also present at the interview of Plaintiff Gantkessy at his place of employment on June 2, 1993. Plaintiffs have failed to allege any constitutional violations against Agent Schroeder. As such, the Agent is entitled to qualified immunity for all of his actions. He is entitled to qualified immunity for the execution of the search warrant for the reasons given below. As to the claims asserted by Plaintiff Gantkessy, no claim arises to a level of a constitutional violation. Thus, all claims against Agent Schroeder will be dismissed on grounds of qualified immunity.

H. Lawrence Frost

107. The court finally comes to the one individual who was most involved in the FTF investigation of the Plaintiffs, Customs Service Special Agent Frost. While Plaintiffs allege that Agent Frost, along with the other Defendants, was the source of numerous ills, their real complaint against Agent Frost is his preparation and submission of the two affidavits on November 19, 1993 in support of the search warrants for Plaintiffs' residence and place of business. Plaintiffs seek to hold Agent Frost liable for submitting affidavits full of lies and misstatements. Having reviewed both affidavits, as well as the case law governing Plaintiffs' burden in challenging the validity of the affidavits, the court holds that Plaintiffs' claims against Agent Frost fail.

108. In order for Plaintiffs to sustain a successful *Bivens* claim against Agent Frost, they must first establish a violation of their constitutional rights. The violation complained on in this instance is the Fourth Amendment right to be free from unreasonable searches and seizures. In Section IX(B), the court noted that warrantless searches were considered *per se* unreasonable, absent probable cause or consent. In this case, both searches were supported by search warrants. Even when a search warrant has been issued, the search of an individual's home pursuant to that warrant violates the Fourth Amendment, nonetheless, if the warrant is invalid.[213] By invalid, the court refers to a warrant supported by an affidavit insufficient to establish probable cause. In the criminal context, where evidence is obtained in violation of a person's constitutional rights, that evidence is excludable at trial under the exclusionary rule. Under the good faith exception to the exclusionary rule, however, officers may rely on a warrant supported by affidavit alleging more than wholly conclusory statements even if the affidavit, subsequently assessed, is found insufficient to establish probable cause.[214] An affidavit "so lacking in evidence of probable cause as to render official belief in its existence entirely unreasonable" is known as a "bare bones" affidavit.[215] "Bare bones" affidavits contain wholly conclusory statements, which lack the facts and circumstances

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FN 213. *United States v. Parker*, 722 F.2d 179, 183 (5th Cir. 1983).

FN 214. *United States v. Leon*, 468 U.S. 897, 922-23, 104 S.Ct. 3405, 3420, 82 L.Ed.2d 677 (1984); *United States v. Benbrook*, 40 F.3d 88,91 (5th Cir. 1995); *United States v. McCarty*, 36 F.3d 1349, 1356 (5th Cir. 1994); *United States v. Fisher*, 22 F.3d 574, 578 (5th Cir.), *cert. denied*, 513 U.S. 1008,115 S.Ct. 529,130 L.Ed.2d 433 (1994); *United States v. Satterwhite*, 980 F.2d 317, 320 (5th Cir. 1992).

FN 215. *McCarty*, 36 F.3d at 1356; *Fisher*, 22 F.3d at 578; *Satterwhite*, 980 F.2d at 320; *United States v. Craig*, 861 F.2d 818, 821 (5th Cir. 1988).

from which a magistrate can independently determine probable cause.[216] When a warrant is supported by more than a "bare bones" affidavit, officers may rely in good faith on the warrant's validity in conducting a search.[217] And if an officer's reliance on a search warrant is objectively reasonable, evidence obtained under such a warrant is admissible, even if the warrant itself is not based on adequate probable cause.[218] In other words, a criminal defendant cannot seek to exclude incriminating evidence found pursuant to a search warrant under the Fourth Amendment if the executing officers' reliance on the search warrant is objectively reasonable and the warrant is supported by more than a "bare bones" affidavit.

109. Plaintiffs seek to hold individual officers liable civilly for executing the two search warrants on November 22, 1993. However, Plaintiffs have not established that the officers' actions violated their Fourth Amendment rights. All of the officers involved in the execution of the two November 22, 1993 search warrants relied in good faith on the validly issued warrants, and there is little question that the warrants were supported by more than "bare bones" affidavits. Both affidavits,

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FN 216. *See United States v. Marmolejo*, 89 F.3d I 1 85, 1199 (5th Cir. 1996); *United States v. White,* 72 F.3d 1200, 1213 (5th Cir. 1996); *United States v. Brown,* 941 F.2d 1300, 1303 n. 1 (5th Cir. 1991) *(per curiam)* (giving as an example, an affidavit that states the affiant "' has cause to suspect and does believe"' that contraband is located on the premises).

FN 217. *Marmolejo*, 89 F.3d at It 89 (5th Cir. 1996); *White,* 72 F.3d at 1213 (5th Cir. 1996); *Satterwhite,* 980 F.2d at 321; *United States v. Pigrum, 922 F.2d 249, 252 (5th Cir.), cert. denied,* 500 U.S. 936, 111 S.Ct. 2064,114 L.Ed.2d 468 (1991); *United States v. Settegast,* 755 F.2d 1117, 1122 n. 6 (5th Cir. 1985).

FN 218. *United States v. Broussard*, 80 F.3d 1025, 1034 (5th Cir. 1996); *United States v. Restrepo,* 994 F.2d 173, 187 (5th Cir. 1993); *United States v. Royal,* 972 F.2d 643, 646 (5th Cir. 1992), *cert. denied*, 507 U.S. 911, 113 S.Ct. 1258, 122 L.Ed.2d 655 (1993).

one seeking a warrant to search the Rasmusson residence and the other seeking a warrant to search Rasmark corporate offices, were extremely detailed. The affiant, Agent Frost, set forth in great detail the facts thus far established in the investigation and the reasons he thought the search warrants would help uncover further evidence of an ongoing criminal activity. An affidavit must establish a nexus between the place to be searched and the evidence sought,[219] and the affidavits submitted by Agent Frost did just that. All of the officers involved in the execution of the two search warrants were justified in relying on them. Plaintiffs have not proffered any evidence to show otherwise. An officer relying on a search warrant will be immune from liability unless, on an objective basis, it is obvious that no reasonably competent officer could have concluded that a warrant should issue.[220]

110. As concerns Agent Frost specifically, Plaintiffs seek to hold him liable under *Bivens* for obtaining the two search warrants on the basis of false affidavits. In the criminal context, a criminal defendant, against whom evidence seized pursuant to a search warrant is being introduced, can seek to suppress such evidence by challenging the validity of the underlying affidavit supporting the search warrant. In *Franks v. Delaware*,[221] the Supreme Court held that,

> where the Defendant makes a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in the warrant affidavit, and if the allegedly false statement is necessary to the finding of probable cause, the Fourth Amendment requires that a hearing be held at the defendant's

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FN 219. *United States v. Pace*, 955 F.2d 270, 276-77 (5th Cir. 1992).

FN 220. *Malley*, 475 U.S. at 341, 106 S.Ct. at 1096; *Streetman*, 918 F.2d at 556 (5th Cir. 1990).

FN 221. 438 U.S. 154, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978).

> request. In the event that at the hearing the allegation of perjury or reckless disregard is established by the defendant by a preponderance of the evidence, and, with the affidavit's false material set to one side, the affidavit's remaining content is insufficient to establish probable cause, the search warrant must be voided and the fruits of the search excluded to the same extent as if probable cause was lacking on the face of the affidavit.[222]

The holding in *Franks* is consistent with the jurisprudence developed under the exclusionary rule. Under *Franks*, if the defendant can prove, by a preponderance of the evidence, that the affidavit supporting the warrant contains intentional material misrepresentations or omissions, and that without those omissions and misrepresentations the affidavit is no more than a "bare bones" affidavit (i.e., an affidavit that does not establish probable cause),[223] any evidence seized pursuant to that warrant is excludable at trial.[224] Negligent omissions will not undermine the affidavit.[225] Only if the defendant is able to show that the affiant made the statements with deliberate falsity or with reckless disregard for the truth will the court invalidate the warrant and exclude all evidence seized pursuant to it.[226]

111. A statement in a warrant affidavit is not false merely

FN 222. *Id.* at 155-56, 98 S.Ct. at 2676.

FN 223. *See United States v. Cherry*, 50 F.3d 338, 341 (5th Cir. 1995).

FN 224. *See United States v. Singer*, 970 F.2d 1414, 1416 (5th Cir. 1992); *United States v. Namer*, 680 F.2d 1088, 1093 (5th Cir. 1982).

FN 225. *McCarty*, 36 F.3d at 1356.

FN 226. *United States v. Ivy*, 973 F.2d II 84, 1187 (5th Cir. 1992); *United States v. Wake*, 948 F.2d 1422, 1428 (5th Cir. 1991).

because it characterizes or summarizes facts in a particular way; if a statement can be read as true, it is not a misrepresentation.[227] As noted *supra*, a search warrant is valid, even if the affidavit supporting it contains a misrepresentation, if after striking the misrepresentation, there remains sufficient content to support a finding of probable cause.[228] Probable cause is evaluated from the totality of the circumstances.[229]

112. Plaintiffs raise this *Franks* challenge in the civil context. They argue that Agent Frost intentionally misrepresented facts in the affidavits, or recklessly disregarded their truth, causing the affidavits to lack probable cause, thereby invalidating the warrant. There is no Fifth Circuit case law applying *Franks* in the civil context. The court, however, was cited to a fairly recent Tenth Circuit case, *Beard v. City of Northglenn, Colo.*,[230] which discusses a *Franks* challenge in the civil context, and finds its reasoning persuasive. *Beard* involved a § 1983 suit against two police officers for Fourth Amendment violations. Beard had answered an ad for pilots, and forwarded his flying credentials for review. The ad was part of a scam and Beard's flight credentials were never returned to him. The perpetrators of this scam extracted Beard's personal information from his credentials and used that information to effectuate a check kiting scheme.[231] Soon after their commission,

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FN 227. *Cherry*, 50 F.3d at 341; 970 F.2d at 1416; *United States v. Hare*, 772 F.2d 139, 141 (5th Cir. 1985).

FN 228. *United States v. Privette*, 947 F.2d 1259, 1261 (5th Cir. 1991), *cert. denied*, 503 U.S. 912, 112 S.Ct. 1279, 117 L.Ed.2d 505 (1992).

FN 229. *Id.* (citing *Illinois v. Gates*, 462 U.S. 213, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983)).

FN 230. 24 F.3d 110 (10th Cir. 1994).

FN 231. The scheme involved the opening of two checking accounts, one in Plaintiff s name and one in the name of another person whose

police officers began investigating these crimes. The investigation led police to Beard, because his name was used to open up one of the accounts. The investigating officers acquired a copy of Beard's driver's license from the state Department of Public Safety to verify his signature on the account application, and Beard was identified in a photo line-up as the perpetrator by one of the furniture store employees.[232] Based on that information, and other evidence collected in the course of their investigation, the officers prepared an affidavit in support of an arrest warrant. A judge considered the affidavit and issued the warrant for Beard's arrest; Beard was soonafter arrested.[233]

113. Five months later, after discovering his complete innocence, all charges against Beard were dropped. Beard subsequently filed suit against the investigating/arresting officers under § 1983, claiming violations of his Fourth Amendment rights. Among other things, Beard alleged that the affidavit prepared by the officers contained false and misleading information and material omissions. The district judge found that the officers had violated Beard's constitutional rights, but that they acted as would any reasonable officers under the circumstances and, as such, were entitled to qualified immunity.[234] The Tenth Circuit disagreed with the district court's analysis, but affirmed its judgment.

FN 231 (...continued)
flight credentials had also been stolen, at two different banks. The balances of these accounts would then be artificially inflated by writing and depositing checks from one to the other, and vice-versa. The criminals then used the temporarily artificially high balances in these accounts to purchase office furniture and a car. When the checks bounced, the perpetrators were nowhere to be found. *Id.* at 112.

FN 232. *Id.* at 113.

FN 233. *Id.*

FN 234. *Id.* at 114.

114. The *Beard* court first held that a potential Fourth Amendment violation resulting from the issuance of a warrant is to be analyzed at the time the warrant is issued, and not at a later point. The court held that Beard's Fourth Amendment rights were not violated simply because later events proved him innocent.[235] Applying this statement of law to the case at hand, the court must determine whether any alleged Fourth Amendment violations existed as of November 19, 1993. Plaintiffs submit a slew of affidavits, prepared in 1996 and 1997, from individuals interviewed by Agent Perkins in 1990 in the course of the Flores investigation, taking issue with various statements Agent Perkins attributed to them in his DEA-6 reports. Certain portions of those reports were used by Agent Frost in his November 19th affidavits. Because the affidavits submitted by Plaintiffs were prepared three to four years after Agent Frost had prepared his affidavits, they are irrelevant to the determination of whether Agent Frost's affidavits violated Plaintiffs' Fourth Amendment rights.

115. The *Beard* court then discussed the standard set forth in *Franks* governing challenges to affidavits: "To impeach an otherwise valid warrant on the ground that it was false and critical to the finding of probable cause requires proof that the affiant seeking the warrant knew that the challenged information was false or that he had a reckless disregard for its truth." [236] The *Beard* court applied this exact standard to its analysis of Beard's civil challenge to the warrant affidavit.

116. To that end, the Tenth Circuit held that a finding that the affiants had not intentionally misrepresented the truth, or recklessly disregarded it, also constitutes a finding that the defendant officers acted reasonably under the circumstances. Likewise, a finding of objective reasonableness on the part of the affiants constitutes a finding that the affiants did not intentionally misrepresent the truth or were

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FN 235. *Id.*

FN 236. *Id.*

reckless with respect to it.[237] In other words, a district court cannot make the split finding that a plaintiff's Fourteenth Amendment rights were violated on the one hand, yet the officers' conduct was objectively reasonable on the other, entitling them to qualified immunity. This court, likewise, does not see why a less stringent standard than the one developed in *Franks* should apply to a civil plaintiff seeking to hold an officer liable for Fourth Amendment violations on grounds of an invalid search warrant.

117. In the present case, Plaintiffs have not proffered any evidence to show that at the time Agent Frost prepared his affidavits he intentionally misrepresented or omitted material facts, or recklessly disregarded their truth or falsity. For Plaintiffs to demonstrate at least recklessness on Agent Frost's part there must exist evidence that the Agent "'in fact entertained serious doubts as to the truth of his' allegations ... and [a] factfinder may infer reckless disregard from circumstances evincing 'obvious reasons to doubt the veracity' of the allegations."[238] Other than pure speculation and conjecture, Plaintiffs presented no evidence that Agent Frost entertained serious doubts as to the truth of his allegations. Agent Frost had no reason to doubt the accuracy of Agent Perkins's DEA-6 reports. Moreover, Agent Frost did not use the information from the reports as gospel truth. In his affidavits, any time Agent Frost referred to information contained in the DEA-6s, he stated "it was reported that ....." Thus, for the most part, Agent Frost simply relayed what was reported in the DEA-6 reports.

118. This court will not impose a burden on law enforcement officers to personally verify each fact they present in an affidavit. If that were the law, then no law enforcement investigation could be conducted by a team, since one affiant could not have first hand knowledge of

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FN 237. *Id.* at 116.

FN 238. *Id.* (citing *United States v. Williams,* 737 F.2d 594, 602 (7th Cir. 1984) *(quoting St. Amant v. Thompson,* 390 U.S. 727, 731, 88 S.Ct. 1323, 1325, 20 L.Ed.2d 262 (1968)), *cert. denied,* 470 U.S. 1003, 105 S.Ct. 1354, 84 L.Ed.2d 377 (1985)).

every aspect presented in the affidavit unless he or she was personally present at every interview, every surveillance, every record search, etc.. This would certainly defeat the purpose of allocating various aspects of the investigation to those officers best skilled to handle them, and to then collect the findings under one umbrella and move forward. Clearly, that is not the law. Agent Frost affied that he had no reason to doubt the veracity of Agent Perkins or the truthfulness of his reports. Nor did Agent Frost have any reason to doubt the truth or veracity of any other law enforcement officer providing information, whether from surveillance or trash pick-ups or interviews. The fact that Plaintiffs submit affidavits from individuals interviewed by Agent Perkins, who take issue with some of the statements attributed to them in his reports, six to seven years after the fact, and three to four years after Agent Frost prepared his affidavits, does nothing to alter the court's finding that Agent Frost did not intentionally misrepresent any material facts or was reckless with regard to their truth or falsity. Accordingly, the court finds that Plaintiffs have failed to state a claim under the Fourth Amendment based on the preparation of the November 19, 1993 affidavits or the execution of the November 22, 1993 search warrants. As such, all claims against Agent Frost will be dismissed on grounds of qualified immunity.

X. CONCLUSION

119. To summarize, the court finds:

1) Rasmark is not entitled to maintain an action under either *Bivens* or § 1983.

2) Plaintiffs have failed to state a claim under the First Amendment.

3) Plaintiffs have failed to state a claim under the Fourth Amendment.

4) Plaintiffs have failed to state a claim under the Fifth

Amendment.

5) Plaintiffs have failed to state a claim under the Fourteenth Amendment.

6) Any claims by Gantkessy arising out of the July 26, 1993 letter to Ford Motor Company lie in tort.

7) Any and all tort claims asserted against individual federal defendants are treated as tort claims against the federal government under the Federal Tort Claims Act.

8) All law enforcement defendants were acting within the course and scope of their employment.

9) The following claims asserted against the federal government are not actionable under the FTCA: defamation and interference with contractual and employment relations.

10) Plaintiffs' abuse of process claim is not actionable under the FTCA because they failed to meet the jurisdictional prerequisites.

11) Plaintiffs have failed to state a claim against Aero Freight, Inc..

12) The El Paso Police Department and the El Paso Sheriffs Department are not proper parties to this law suit.

13) Chief of Police Russ Leach and Sheriff Leo Samaniego, both sued in their official capacity only, are dismissed from suit as superfluous.

14) Plaintiffs have failed to state a claim against either the City or County of El Paso under § 1983.

15) Plaintiffs' claims against Defendant Beach and Hines are untimely. Alternatively, Plaintiffs' claims against Defendants Beach and Hines are barred by 19 U.S.C. § 507(b).

16) All individual defendants, other than Beach and Hines, are entitled to qualified immunity.

17) Plaintiffs claims against many of the Defendants were untimely brought.

Accordingly,

120. It is ORDERED that the Motion for Summary Judgment by Defendant Gail Beach, Chris Hines, and Aero Freight, Inc. be GRANTED.

121. It is ORDERED that the Second Supplemental Motion for Summary Judgment by Defendant Leo Samaniego, Neil Baker, Jerry Keith, County of El Paso and El Paso County Sheriff s Department be GRANTED.

122. It is ORDERED that the Motion for Summary Judgment by Defendant City of El Paso, Russ Leach and El Paso Police Department be GRANTED.

123. It is ORDERED that the Motion to Dismiss or, in the Alternative, Motion for Summary Judgment by the Federal Defendants'[239] be GRANTED.

124. It is ORDERED that the Motion for Summary Judgment by Defendant Neil Baker and Jerry Keith be GRANTED.

Signed this 22nd day of May, 1997.

/s/ Royal Furgeson
UNITED STATES DISTRICT JUDGE

FN 239. The Federal Defendants are: Wilczewski, Frost, Schroeder, HalleM Weise, Hensley, King, Reay, Lappe, Mills, Brown, Perkins, Chavez, Aguirre, Lenox, Hivick, Martinez, and Acosta.

[Paragraph numbers added to text.]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

Mark B. Rasmusson, et al.	§	
	§	
Plaintiffs	§	
	§	
v.	§	**EP-95-CA-475**
	§	May 22, 1997
Lawrence E. Frost, et al.	§	
	§	

ORDER

1. On the 22nd day of May, 1997, the Court entered a Memorandum Opinion and Order granting Defendants' Motions for Summary Judgment. That same day, the court entered a Final Judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure. In light of the Memorandum and Order, the court now enters the following:

2. It is ORDERED that Plaintiffs' Motion to Seal, filed on March 14, 1997, be DENIED.

3. It is ORDERED that Defendant Leo Samaniego's, Neil Barker's, Jerry Keith's, County of El Paso's and el Paso county Sheriff's Department's Motion for Leave to File Pleadings in excess of Ten Pages, filed on March 31, 1997, be GRANTED.

4. It is ORDERED that Defendant City of El Paso, El Paso Police Department and Russ Leach's Motion for Leave to File Amended Answer and Amended Motion for Summary Judgment, filed on March 31, 1997, be GRANTED.

5. It is ORDERED that Defendant George Salas and James Holland's Motion for Leave to File Pleadings in excess of Ten Pages, filed on March 31, 1997, be GRANTED.

6. It is ORDERED that the Federal Defendants' Motion for Leave to File in Excess of Ten Pages, filed on April 2, 1997, be GRANTED.

7. It is ORDERED that the Federal Defendants' Motion for Leave to File Declarations of Larry Brown and Donald Reay, filed on April 13, 1997, be GRANTED.

8. It is ORDERED that Plaintiffs' Motion for Leave to File Pleadings in Excess of 10 Pages, filed on April 14, 1997, be GRANTED.

9. It is ORDERED that Plaintiffs' Motion to Extend Time to File Plaintiffs' Oppositions to Defendants' Motions for Summary Judgment, filed on April 14, 1997, be GRANTED.

10. It is ORDERED that Plaintiffs' Motion for Leave to File Pleadings in Excess of 10 Pages, filed on April 15, 1997, be GRANTED.

11. It is ORDERED that Plaintiffs' Motion to Extend Time to File Plaintiffs' Opposition to Defendants' Motion for Summary Judgment, filed on April 16, 1997, be GRANTED.

12. It is ORDERED that Plaintiffs' Motion to Strike Defendant Beach's, Hines's and Aero Freight's Motion for Summary Judgment, filed on April 16, 1997, be DENIED.

13. It is ORDERED that Plaintiffs' Motion for Discovery, filed on April 17, 1997, be DENIED.

14. It is ORDERED that Plaintiffs' Motion for Leave to File Cross Index of Constitutional Violations in Plaintiffs' Third Amended Complaint, filed on April 21, be GRANTED.

15. It is ORDERED that Plaintiffs' Motion for a *Franks* Hearing, filed on May 6, 1997, be DENIED.

16. It is ORDERED that Plaintiffs' Motion for Leave to File Plaintiffs' Renewed Motion to Strike Portions of the Affidavit of James Holland, filed on May 6, 1997, be DENIED.

17. It is ORDERED that Plaintiffs' Motion for Leave to File Plaintiffs' Renewed Motion to Strike Portions of the Affidavit of Leo Samaniego, filed on May 6, 1997, be DENIED.

18. It is ORDERED that Plaintiffs' Motion for Leave to File Plaintiffs' Renewed Motion to Strike Portions of the affidavit of Neil Baker, filed on May 6, 1997, be DENIED.

19. It is ORDERED that Plaintiffs' Motion for Leave to File Plaintiffs' Renewed Motion to Strike Portions of the Affidavit of Jerry Keith, filed on May 6, 1997, be DENIED.

20. It is ORDERED that Plaintiffs' Motion for Leave to File Plaintiffs' Renewed Motion to Strike Portions of the Affidavit of George Salas, filed on May 7, 1997, be DENIED.

21. It is ORDERED that the Motion to Strike filed by Defendant Salas on May 8, 1997, be DENIED AS MOOT.

22. It is ORDERED that the Motion to Strike Pleadings filed by Defendant Keith on May 12, 1997, be DENIED AS MOOT.

23. It is ORDERED that Plaintiffs' Motion for Leave to File Opposition to Federal Defendants' Notice of Substitution and Application for Order Thereon, filed on May 16, 1997, be DENIED.

24. It is ORDERED that Plaintiffs' Motion for Leave to File Motion to Stay Proceedings Until Such Time as Chief Judge Hudspeth Has Reviewed Plaintiffs' Motion to Strike Evidence, or to Transfer the Matter as a Connected Case to Chief Judge Hudspeth, filed on May 16, 1997, be DENIED.

25. It is ORDERED that Plaintiffs' Motion for Leave to File Plaintiffs' Motion to Compel Production of all Records, filed on May 16, 1997, be DENIED.

26. It is ORDERED that Plaintiffs' Motion for Leave to File Plaintiffs' Opposition to Federal Defendants' Reply filed on May 6, 1997 exceeding page limit, filed on May 16, 1997, be DENIED.

27. It is ORDERED that all pending Motions not specifically disposed of be DENIED AS MOOT.

Signed this 22nd day of May, 1997.

/s/ Royal Furgeson
UNITED STATES DISTRICT JUDGE

[Paragraph numbers added to text]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

MARK A. RASMUSSON, et al.,	§	
	§	
Plaintiffs,	§	
v.	§	EP-95-CA-475-F
LAWRENCE E. FROST, et al.,	§	August 9, 1996
	§	
Defendants.	§	

SCHEDULING ORDER

1. On this day, the Court has considered the pending motions in the above styled and numbered case and the various discovery disputes that have arisen thus far. The Court held a status conference on August 8, 1996, to determine the parties to the suit and their respective arguments, to resolve discovery issues, and to set parameters for the completion of discovery, particularly as to the Defendants' Motion for Qualified Immunity. As a result of that hearing the Court enters the following Order.

2. It is hereby ORDERED that Plaintiffs will provide the Court with a list of no more than 12 individuals whom they wish to depose as to the issue of Defendants, qualified immunity defense by August 15, 1996. Defendants will make any objections they have to this list by August 21, 1996. The Court will rule on any objections made by the Defendants on August 29, 1996.

3. The subject of these depositions will be limited specifically to the named Defendants, ability to assert a defense of qualified immunity. Plaintiffs, taking of these depositions will not exceed 2 hours in length. The Court will rule on any objections arising in the course of these 12 depositions by phone if necessary.

4. Depositions will be taken on Fridays beginning September 6, 1996, unless otherwise arranged by the parties. All depositions will take place in El Paso, TX. Any individuals whom Plaintiffs wish to depose who are located outside the El Paso metropolitan area will be brought to El Paso for the deposition at the Plaintiffs' expense or be deposed by telephone. In particular, it is the Court's understanding that Defendant Michael Lappe is in Holland at this time. His deposition will be done by phone if Plaintiffs intend to depose him. All depositions will be completed by September 27, 1996.

5. It is further ORDERED that Plaintiffs will also submit to the Court a list of its requests for document production by August 15, 1996. The requests for document production will be limited specifically to the named Defendants' ability to assert a defense of qualified immunity. As with the deposition requests, Defendants will file any objections to this list by August 21, 1996 and the Court will rule on any objections made by the Defendants on August 29, 1996.

6. Plaintiffs are to file their Third Amended Complaint by October 18, 1996. Defendants will have until November 1, 1996, to file their Amended Motions for Summary Judgment on the issue of qualified immunity. Plaintiffs will have until November 15, 1996, to file responses as to Defendants' summary judgment motions on qualified immunity.

7. It is further ORDERED that all other discovery in this matter beyond the resolution of the qualified immunity issue as outlined above is stayed until further notice from the Court. No other interrogatories are to be served or answered until such time as Plaintiffs file their third amended complaint.

8. Oral arguments regarding the summary judgment motions will be held Tuesday, November 19, 1996 , at 2:00 p.m.

SIGNED this 9th day of August, 1996.

/s/ ROYAL FURGESON
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

MARK B. RASMUSSON, RASMARK JET CHARTER, INC., DEBORAH L. RASMUSSON, ANDREW A. GANTKESSY	§	NO. EP-95-CA-475-F
	§	August 30, 1996
v.	§	
LAWRENCE E. FROST, ET AL.	§	

ORDER REGARDING PLAINTIFFS' PRODUCTION REQUEST FOR QUALIFIED IMMUNITY

On this day, the court considered Plaintiffs, Production Request for Qualified Immunity and the responses thereto. At the outset, the court must observe that the Requests did not comply in many respects with the spirit of the court's instructions at the last hearing on this matter. The court instructed counsel for Plaintiffs to focus the production request (and the entire case) to bring some coherence to the litigation. The 92 requests covering 18 pages were not focused. Plaintiffs took a "kitchen sink" approach to their requests, which complicate the court's efforts to better understand the limits of the qualified immunity issues and the entire case. Nonetheless, the court has reviewed the Request and the responses and believes the following order is appropriate.

It is accordingly ORDERED that:

1. Requests 1-9 are denied.

2. Request 10 is denied, because it is an interrogatory, not a document request.

3. Request 11 is granted for the year 1992.

4. Requests 12-18 are denied.

5. Request 19 is granted but only to the extent that the material is in handbook form, of public record and not deemed classified by statute, rule or regulation.

6. Requests 20-21 are denied.

7. Request 22 is denied because no responsive documents exist.

8. Request 23 is denied, because it is an interrogatory, not a document request.

9. Request 24 is denied.

10. Request 25 is granted.

11. Request 26 is granted with redaction approved, if necessary.

12. Requests 27-28 are granted.

13. Requests 29-30 are denied.

14. Request 31 is denied because there is only one document, the letter to Ford Motor Co., and it is already in the possession of Plaintiffs.

15. Request 32 is denied.

16. There is no Request 33.

17. Requests 34-35 are denied.

18. Request 36 is granted with redaction approved, if necessary.

19. Request 37 is denied because no responsive documents exist.

20. Requests 38-44 are granted with redaction approved, if necessary.

21. Request 45 is granted.

22. Request 46 is denied because no responsive documents exist.

23. Requests 4.7-48 are granted with redaction approved, if necessary.

24. Request 49 is granted.

25. Request 50 is denied because no responsive documents exist.

26. Request 51 is granted with redaction approved, if necessary.

27. Request 52 is denied' because no responsive documents exist.

28. Request 53 is denied because the documents are already in the possession of Plaintiffs.

29. Request 54 is denied.

30. Request 55 is denied because no responsive documents exist.

31. Request 56 is granted.

32. Requests 57-69 are denied.

33. Request 70 is granted.

34. Requests 71-73 are denied.

35. Request 74 is granted.

36. Requests 75-93 are denied.

In regard to the Requests which have been granted, the parties involved will coordinate the production to occur at a reasonable time in a place designated by the Defendant making the production.

SIGNED the 30th day of August, 1996.

/s/ ROYAL FURGESON
UNITED STATES DISTRICT JUDGE

[Paragraph numbers added to text.]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

Mark B. Rasmusson, et al.	§	
	§	
Plaintiffs	§	
v.	§	EP-95-CA-475-F
	§	
Lawrence E. Frost, et al.,	§	March 13, 1997
	§	
Defendants	§	

ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFFS' MOTION FOR LEAVE TO ADD ADDITIONAL PARTIES TO THEIR THIRD AMENDED COMPLAINT

1. On this day the court considered Plaintiffs' Motion for Leave to Add Additional Parties to their Third Amended Complaint. The court is of the opinion that the Motion should be granted as to Defendant Agent Eric Mills, and denied as to Defendants United States Customs Service and Agent John Peterson.

2. In FDIC v. *Conner, 20* F.3d 1376 (5th Cir. 1994), the Fifth Circuit summarized the law governing the amendment of pleadings. In part, the court wrote that

> Federal Rule of Civil Procedure 15(a) evinces a strong bias in favor of granting a motion for leave to amend a pleading. The Rule's language that leave to amend "shall be freely given when justice so requires" is often cited. However, leave to amend need not be granted when it would be futile to do so. Such a situation arises

> when leave is sought to add a claim upon which the statute of limitations has run. However, under Rule 15(c), an amendment to a complaint will relate back to the date of the original complaint if the claim asserted in the amended pleading arises "out of the conduct transaction, or occurrence set forth or attempted to bee set forth in the original pleading." If a claim asserted in an amended pleading relates back to the date of the original complaint and is thus not barred by limitations, then leave to amend should ordinarily be granted.

Id. at 1385 (internal citations omitted). The court went on to discuss the application of the relation back doctrine under Rule 15(c).

> Some applications of the relation back doctrine are straightforward. If a plaintiff attempts to interject entirely different conduct or different transactions or occurrences into a case, then relation back is not allowed.... Conversely, if a plaintiff seeks to correct a technical difficulty, state a new legal theory of relief, or amplify the facts alleged in their prior complaint, then relation back is allowed.

Id. at 1386. Plaintiffs first seek to add the Customs Service to their third amended complaint, alleging that the agency violated the Privacy Act, 5 U.S.C. § 552a et seq.. In support of their Motion for Leave to Amend, Plaintiffs argue that because the Customs Service received a copy of the original complaint, it was put on notice that several of its agents had violated provisions of the Privacy Act. Plaintiffs are mistaken in their assertion. Not only was the Customs Service not named in the original complaint, but it could not have had notice that any of its agents had violated the Privacy Act, because a cause of action under the Act cannot be maintained against an individual, but only against an agency. *See* 5 U.S.C. § 552a(g)(1) (section governing civil remedies). The statute of limitations for civil enforcement of the Privacy Act is two years from the date on which the cause of action arose. *See* 5 U.S.C. § 552(g)(5). Thus, Plaintiffs' action against the Customs Service is barred by the

statute of limitations. The relation back doctrine under Rule 15(c) is inapplicable to the case at hand because Plaintiffs seek to interject an entirely different transaction or occurrence into the case, and not simply to correct a technical difficulty, state a new legal theory of relief, or amplify the facts alleged in a prior complaint. *See Conner,* 20 F.3d at 1385-86. The same analysis applies to Agent John Peterson. He was not a named Defendant in the original complaint, was never served with a copy of the complaint, and the actions Plaintiffs complain of took place in 1988 and 1989, clearly outside the limitations period.

3. Finally, the court considers the addition of Agent Eric Mills as a party Defendant. Agent Mills was initially named as a Defendant in Plaintiffs' original complaint, but was later dropped due to insufficient facts. Plaintiffs now seek to add the Agent once again based on testimony given during a deposition held in January 1997. According to Plaintiffs, Agent Mills admitted to being intricately involved in surveillance and search and seizure operations directed against them. The Assistant United States Attorney, responding on behalf of Agent Mills in opposition to the Motion for Leave to Amend, argues that the Agent's deposition testimony clearly shows his minimal involvement. A particular excerpt from that video deposition was provided for the court's review. Although the excerpt would support the Agent's minimal involvement, because the court does not have the entire transcript before it, and because the Plaintiffs have reasserted, or amplified, facts previously alleged against the Agent, the court finds that the relation back doctrine under Rule 15(c) is applicable as to Agent Mills. This determination should in no way be read as a ruling on the merits concerning Agent Mills' liability. However, under the notice pleading regime, Plaintiffs have alleged sufficient facts, of a like enough nature as those alleged previously, so as to give the court little choice but to allow the addition of Agent Mills, and only Agent Mills, as a party Defendant. Accordingly,

5. It is ORDERED that Plaintiffs be GRANTED leave to add Agent Eric Mills as a party Defendant to their third amended complaint.

6. It is ORDERED that Plaintiffs be DENIED leave to add the United States Customs Service and Agent John Peterson as party

Defendants to their third amended complaint.

Signed this 13th day of March 1997.

/s/ ROYAL FURGESON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

MARK B. RASMUSSON,	§	
RASMARK JET CHARTER, INC.,	§	
DEBORAH L. RASMUSSON,	§	
ANDREW A. GANTKESSY	§	
	§	
Plaintiffs,	§	
v.	§	NO. EP-95-CA-475-F
	§	
	§	August 30, 1996
LAWRENCE E. FROST, ET AL.	§	
	§	
Defendants.		

ORDER

On this day, the court considered Defendant United States' Notice of Substitution and Application for Order Thereon and the Court, having considered the same, is of the opinion that said application should be denied without prejudice to be refiled. The court's goal at this time is to focus on the qualified immunity issue. When that matter is ripe for decision, this matter may be ripe as well and ready for consideration. The Notice and Application for Order can then be refiled at that time.

It is therefore ORDERED that Defendant's Notice and Application be denied with prejudice to be refiled, for the reasons stated.

SIGNED this 30th day of August, 1996.

/s/ Royal Furgeson
UNITED STATES DISTRICT JUDGE

[Paragraph numbers added to text.]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

Mark B. Rasmusson, et al.,	§	
	§	
Plaintiffs	§	
	§	EP-95-CA-475
v.	§	
Lawrence E. Frost, et al.,	§	April 1, 1997
	§	
Defendants	§	

ORDER DENYING PLAINTIFFS' MOTION FOR RECONSIDERATION OF THE COURT'S ORDER DENYING PLAINTIFFS' MOTION TO ADD U.S. CUSTOMS SERVICE AS PARTY-DEFENDANT IN PLAINTIFFS' THIRD AMENDED COMPLAINT

1. Currently pending before the court is Plaintiffs' Motion for Reconsideration of the Court's Order Denying Plaintiffs' Motion to Add U.S. Customs Service as Party-Defendant in Plaintiffs' Third Amended Complaint. On March 13, 1997, the court entered an Order granting Plaintiffs leave to add one additional party to their Third Amended Complaint. In that same Order, the court denied Plaintiffs leave to add the United States Customs Service and one Customs Agent to their Third Amended Complaint. Plaintiffs have now filed a Motion for Reconsideration, urging the court to revisit its March 13th Order. The Customs Service has filed a strenuous objection.

2. Plaintiffs seek to add the Customs Service to their third amended complaint, alleging that the agency violated the Privacy Act, 5 U.S.C. § 552a et seq.. In support of their Motion for Leave to

Amend, Plaintiffs argued that because the Customs Service received a copy of the original complaint, it was put on notice that several of its agents had violated provisions of the Privacy Act. The court disagreed. It held that not only was the Customs Service not named in the original complaint, but it could not have had notice that any of its agents had violated the Privacy Act, because a cause of action under the Privacy Act cannot be maintained against an individual, but only against an agency. *See* 5 U.S.C. § 552a(g)(1) (section governing civil remedies).

3. The statute of limitations for civil enforcement of the Privacy Act is two years from the date on which the cause of action arose. *See* 5 U.S.C. § 552a(g)(5). The court found that since the complained of acts on the part of the Customs Service occurred more than two years prior to the filing of the Third Amended Complaint, the statute of limitations had run. The court also found that the relation back doctrine under Rule 15(c) of the Federal Rules of Civil Procedure was inapplicable to the case at hand because Plaintiffs sought to interject a different transaction or occurrence into the case, and not simply to correct a technical difficulty, state a new legal theory of relief, or amplify the facts alleged in a prior complaint. *See F.D.I.C. v. Conner,* 20 F.3d 1376, 13 85-86 (5th Cir. 1996).

4. Section 552a(g)(5) also provides that "where an agency has materially and willfully misrepresented any information . . . and the information so misrepresented is material to establishment of liability of the agency to the individual under this section, the action may be brought at any time within two years after discovery by the individual of the misrepresentation." In their Motion for Reconsideration, Plaintiffs contend that they discovered the material and willful misrepresentation on the part of the Customs Service around April 27, 1996, the day Plaintiff Gantkessy's file was received from his previous attorney, Mr. Antonio Silva. Plaintiffs contend that in that file, for the first time, they discovered a letter written by Customs Service Special Agent Michael T. Lappe to Ford Motor Company on July 26, 1993. The letter informed Ford Motor Company that one of its contract carriers, Rasmark Jet Charter, Inc., was under investigation for violations of numerous federal statutes

and that one of Ford's employees, Mr. Gantkessy, was possibly associated with Rasmark. Ford was asked to turn over any internal records concerning its association with Rasmark.

5. Plaintiffs contend that the contents of that letter are willful and malicious, and that the Customs Service should never have disclosed information concerning a pending investigation, which ultimately caused Rasmark to lose its contract with Ford. Plaintiffs also contend that details of the investigation were likewise maliciously and willfully disclosed to other third parties. The question that this court must resolve is not whether agents of the Customs Service acted maliciously in disclosing information about a pending investigation, but rather, assuming that their actions were willful and malicious, when the Plaintiffs knew about them. Having reviewed Plaintiffs' Original Petition (sic), the court once again finds that the statute of limitations for bringing a Privacy Act action against the Customs Service has run.

6. In their Motion for Reconsideration, Plaintiffs complain that one of the willful acts on the part of Defendant Frost was his contacting Plaintiff Rasmusson's former wife and telling her falsehoods about her former husband. However, in paragraphs 67 and 68 of their Original Petition (sic), Plaintiffs clearly show that they not only knew about these acts, but knew exactly when the allegedly willful acts occurred. Plaintiffs also knew about all of the contacts Customs agents had with Ford Motor Company, and the contents of those contacts. *See* Paragraphs 103, 105, 106 and 107. All of the contacts with Ford, including the raids, took place at the end of 1993, several months after Agent Lappe wrote Ford the letter. Several other "recently discovered" allegations were clearly stated by Plaintiffs in their Original Petition (sic). Normally, factual assertions in pleadings are considered to be judicial admissions conclusively binding on the party who made them. *See White v. ArcolPolymers, Inc.*, 720 F.2d 1391, 1396 (5th Cir. 1983) (citing *Myers v. Manchester Ins. & Indemnity Co.*, 572 F.2d 134 (5th Cir. 1978)). Where amendments to pleadings only add allegations, deleting nothing stated in the prior pleadings, admissions made in the prior pleadings continue to have conclusive effect. Id. at 1396 n. 5 (*citing Dussouy v. Gulf Coast Inv.*

Corp., 660 F.2d 594, 601 (5th Cir. 198 1)). Plaintiffs have alleged acts in their Motion for Reconsideration which they alleged in their Original Petition (sic). According to the Original Petition (sic), Plaintiffs clearly knew of the alleged "misrepresentations" more than two years prior to the filing of the Third Amended Complaint. As such, Plaintiffs have failed to timely bring suit under the Privacy Act against the Customs Service. See 5 U.S.C. § 552a(g)(5). Accordingly,

7. It is ORDERED that Plaintiffs' Motion for Reconsideration of the Court's Order Denying Plaintiffs' Motion to Add U.S. Customs Service as Party-Defendant in Plaintiffs' Third Amended Complaint be DENIED.

Signed this 1st day of April, 1997.

/s/ ROYAL FURGESON
UNITED STATES DISTRICT JUDGE

[Paragraph numbers added to text.]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

Mark B. Rasmusson, et al.,	§	
	§	
Plaintiffs	§	
v.	§	EP-95-CA-475-F
	§	
Lawrence E. Frost, et al.,	§	June 12, 1997
	§	
Defendants	§	

ORDER DENYING PLAINTIFFS' MOTION FOR RECONSIDERATION AND/OR CLARIFICATION OF THE COURT'S ORDER OF MAY 27,1997 REGARDING PLAINTIFFS' OPPOSITION TO FEDERAL DEFENDANTS' NOTICE OF SUBSTITUTION AND APPLICATION FOR ORDER THEREON

1. Currently pending before the court is Plaintiffs' Motion for Reconsideration and/or Clarification of the Court's Order of May 27, 1997 Regarding Plaintiffs' Opposition to Federal Defendants' Notice of Substitution and Application for Order Thereon. Having considered the Motion, the court is of the opinion that it should be denied.

2. On May 27, 1997, the court entered an extensive Order disposing of all of Plaintiffs' claims. In its Order, the court found that certain of Plaintiffs' claims were actionable only under the Federal Tort Claims Act, and that those actions could have been brought only against the United States, and not against the named

individuals. At some point prior to the entry of the court's Order, the federal government moved to substitute the United States for the individual Defendants and to certify that all of the federal Defendants were acting within the scope of their employment. In its Order, the court expressly found that Fifth Circuit jurisprudence counseled against giving any weight to the certification by the Attorney General that federal agents were acting within the scope of their employment. In fact, in its Order, the court makes no mention of the certification, since it did not influence the court's decision. Plaintiffs now ask the court to reconsider its decision under the FTCA and have requested a hearing. The court declines Plaintiffs' invitation to reconsider its decision under the FTCA and will not hold a hearing on the matter. If Plaintiffs are entitled to relief, it will have to come from the Fifth Circuit. Accordingly,

3. It is ORDERED that Plaintiffs' Motion for Reconsideration and/or Clarification of the Court's Order of May 27, 1997 Regarding Plaintiffs' Opposition to Federal Defendants' Notice of Substitution and Application for Order Thereon be DENIED.

Signed this 12th day of June, 1997.

/s/ Royal Furgeson
UNITED STATES DISTRICT JUDTGE

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

Mark B. Rasmusson, et al.,	§	
	§	
Plaintiffs,	§	
v.	§	
	§	EP-95-CA-475-F
Lawrence E. Frost, et al.,	§	
	§	June 12, 1997
Defendants.	§	

ORDER DENYING PLAINTIFFS' MOTION FOR RECONSIDERATION AND/OR CLARIFICATION OF THE COURT'S ORDER OF MAY 27,1997 REGARDING PLAINTIFFS' MOTION TO COMPEL PRODUCTION OF ALL RECORDS THAT ARE DEFENDANTS' BASIS OF GOOD FAITH BEFORE THE COURT AND BASIS FOR OBJECTIONS TO DEPOSITION QUESTIONS OR ALTERNATIVE PRODUCE FOR IN CAMERA REVIEW

Currently pending before the court is Plaintiffs' Motion for Reconsideration and/or Clarification of the Court's Order of May 27, 1997 regarding Plaintiffs' Motion to Compel Production of All Records that are Defendants' Basis of Good Faith Before the Court and Basis for Objections to Deposition Questions or Alternative Produce for In Camera Inspection. Having considered the Motion, the court is of the opinion that it should be denied.

Contrary to well established Supreme Court and Fifth Circuit precedent, Plaintiffs were allowed to engage in extensive discovery on matters unrelated to the qualified immunity of the individual Defendants. As the court noted in its Order of May 27th, this

extensive discovery failed to yield the desired results for Plaintiffs. Yet even after the court has determined that all individual Defendants working for various government entities were entitled to qualified immunity, Plaintiffs have continued to seek information unrelated to the qualified immunity issue. The court stands firm by its decision and will not compel the production of documents requested by Plaintiffs. If the court is in error, it will be told so by the Fifth Circuit. In the meantime,

It is ORDERED that Plaintiffs' Motion for Reconsideration and/or Clarification of the Court's Order of May 27, 1997 regarding Plaintiffs' Motion to Compel Production of All Records that are Defendants' Basis of Good Faith Before the Court and Basis for Objections to Deposition Questions or Alternative Produce for In Camera Inspection be DENIED.

Signed this 12th day of June, 1997.

/s/ Royal Furgeson
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION OF TEXAS

Mark B. Rasmusson, et al.,	§	
	§	
Plaintiffs	§	
	§	EP-95-CA-475 F
v.	§	
	§	June 20, 1997
Lawrence E. Frost, et al.,	§	
	§	
Defendants	§	

ORDER DENYING PLAINTIFFS' MOTION FOR NEW TRIAL

1. Currently pending before the court is Plaintiffs' Motion for New Trial, filed pursuant to Rule 59 of the Federal Rules of Civil Procedure. Since there was no trial in the case at hand, the court treats Plaintiffs' Motion as a Motion to Alter or Amend Judgment under Rule 59(b). On May 27, 1997, the court entered a detailed Order disposing of all of Plaintiffs' claims. Plaintiffs now take issue with many, if not most, of the court's conclusions. Having carefully read Plaintiffs' Motion for New Trial and Brief, the court finds that Plaintiffs have not raised any points that would make the court reconsider its previous opinion.

2. Prior to the hearing on the various pending motions, the court spent a great deal of time reading through the voluminous filings, especially through Plaintiffs' multi-volume exhibits. The primary purpose of the hearing was to give Plaintiffs an opportunity to provide the court with something other than conclusory allegations or inapposite affidavits on the issues of qualified immunity and the running of the statute of limitations. Despite being given every opportunity to show where fact issues existed in this case, the Plaintiffs failed to do so. The court was of the opinion at the time it wrote its Order, and remains of the same opinion after reading Plaintiffs' latest Motion, that Plaintiffs

have not only stated meritless claims, but they have failed to raise any issues of material fact on the questions of qualified immunity, municipal liability or the running of the statute of limitations. It is clear from all of their subsequent filings that Plaintiffs do not, in any way, agree with the court's Order. Although they will not be granted relief here, Plaintiffs do have a remedy: an appeal to the Fifth Circuit Court of Appeals. If this court has indeed applied the wrong legal standard in ruling on the various motions, or has transgressed in some other way, it will be told so by the Court of Appeals. So as not to mince words, if Plaintiffs are entitled to relief, it will not be forthcoming from this court unless it is told otherwise by the Fifth Circuit. Accordingly,

It is ORDERED that Plaintiffs Motion for New Trial, which was treated by this court as a Motion to Alter or Amend Judgment, be DENIED.

Signed this 20th day of June, 1997.

/s/ Royal Furgerson
UNITED STATES DISTRICT JUDGE

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

JAN 16 1996

95-0273:CLM:EP:C:DL

CERTIFIED MAIL-RRR

Sandra Jackson Sheppard
Sheppard and Associates
Attorney and Counselor at Law
2600 Southwest Freeway, Suite 420
Houston, Texas 77098

Dear Ms. Sheppard:

This is in response to the claim of your client, Mr. Mark Rasmusson, in the amount of $30,000,000.00, for acts complained of beginning on September 19, 1990 and continuing to the present time by several federal and state police agencies. This reply is on behalf of the named federal agencies; i.e., the Federal Bureau of Investigation, Drug Enforcement Administration, U.S. Customs Service, Bureau of Alcohol, Tobacco and Firearms, U.S. Border Patrol, U.S. Marshals Service, and Internal Revenue Service.

Mr. Rasmusson's claim alleges illegal seizures of various property on November 19, 1993, of various property and one Mercedes automobile on November 24, 1992, of Deborah Rasmusson and a box containing business and personal records on May 23, 1992, of a Rasmark Jet at Dallas Love Field on June 16, 1993, of a Rasmark Jet at the El Paso International Airport on September 1, 1993, of a Rasmark Jet at Brownsville, Texas on October 6, 1988, and of a Rasmark Jet in the summer of 1990. Further, Mr. Rasmusson's claim states that Special Agent Larry Frost, U.S. customs Service, contacted attorney William

Cole on June 17, 1992 and falsely alleged that Mark Rasmusson was engaged in criminal activity and urged attorney Cole to lodge an action to seek a court order denying Mark Rasmusson visitation rights with his son. Mr. Mark Rasmusson's claim goes on to allege that a series of terror tactics were used against him over a two-year period, including clandestine entries into the Rasmusson home and office, intimidation of bank officials and Rasmark Jet customers, and attempts to convince the Rasmussons each was out to kill the other.

The Federal Tort Claims Act, under which Mr. Rasmusson's claim is filed, provides that the United States shall be liable for damages proximately caused by the negligent or wrongful acts or omissions of its employees while in the scope of their employment. A complete review of the facts and circumstances having reference to Mr. Rasmusson's claim has been made. Based upon this review it has been established that the federal employees involved were carrying out their law enforcement duties in a reasonable and responsible manner, and in accordance with the authority granted under law. Therefore, Mr. Rasmusson's claim is denied.

This denial is not intended to imply that other procedural or substantive requirements do not also have application in denying Mr. Rasmusson's claim.

In the event Mr. Rasmusson is dissatisfied with this decision he may initiate a lawsuit in an appropriate U.S. district court no later than six (6) months from the date of this notification.

Sincerely,

/s/ Walter Biondi
Assistant Commissioner

(Investigations)

cc: SAC John Navarete
Federal Bureau of Investigation
700 E. San Antonio St., Suite C-600
El Paso, Texas 79901

SAC Pam Burquez
Drug Enforcement Administration
700 E. San Antonio St., Suite D-701
El Paso, Texas 79901

SAC Allan Cramer
Secret Service
4849 N. Mesa, Suite 210
El Paso, Texas 79912

SAC Victor Maldonado
Bureau of Alcohol, Tobacco & Firearms
700 E. San Antonio St., Suite C-310
El Paso, Texas 79901
CBPA Silvestre Reyes

U.S. Border Patrol
El Paso Sector
8901 Montana Avenue
El Paso, Texas 79925

SAC Gary Brown
U.S. Marshal Service
511 E. San Antonio Street
El Paso, Texas 79901

Internal Revenue Service
Special Agent in Charge
Criminal Investigation Division
P.O. Box 27500
El Paso, Texas 79926

Supreme Court, U.S.
FILED

981345 FEB 8 - 1999

No. OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

MARK B. RASMUSSON, et. al.,

Petitioners,

v.

LAWRENCE E. FROST, et. al.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

APPENDIX B
Petitioners' Third Amended Original Petition

SANDRA J. SHEPPARD, Esq.
Counsel of Record
6915 Boeing Drive
El Paso, Texas 79925-1107
(915) 772-4616

Attorney for Petitioners

APPENDIX B

PETITIONER'S THIRD AMENDED ORIGINAL PETITION

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

MARK B. RASMUSSON, RASMARK JET CHARTER, INC., DEBORAH L. RASMUSSON, ANDREW A. GANTKESSY,	§ § § §	
PLAINTIFFS,	§	CIVIL ACTION:
	§	EP-95-CA-475-F
VS.	§	JURY DEMAND
LAWRENCE E. FROST, GEORGE J. WEISE, CAROL B. HALLETT, JOHN E. HENSLEY, DONALD L. REAY, MICHAEL T. LAPPE, MICHAEL J. WILCZEWSKI, FRED J. SCHROEDER, WALTER J. KING, LARRY BROWN, ERIC MILLS STEVEN ERIC PERKINS, ELI P. CHAVEZ RAPHAEL AGUIRRE TOM LENOX, FONDA R. HIVICK, ROBERT L. MARTINEZ, JOE ACOSTA,	§ § § § § § § § § § § § § § § § § § § §	
ARE SUED IN THEIR INDIVIDUAL CAPACITY,	§ §	
UNITED STATES CUSTOM SERVICE, (sued under THE	§ §	

PRIVACY ACT only) §

CITY OF EL PASO, §
EL PASO POLICE DEPARTMENT, §
CHIEF OF POLICE RUSS LEACH IN §
HIS OFFICIAL CAPACITY, §
GEORGE L. SALAS, IN HIS §
INDIVIDUAL AND OFFICIAL §
CAPACITY AS AN EL PASO POLICE §
DEPARTMENT OFFICER, §
JAMES HOLLAND, IN HIS §
INDIVIDUAL AND OFFICIAL §
CAPACITY AS AN EL PASO POLICE §
DEPARTMENT OFFICER, §
§
COUNTY OF EL PASO, §
EL PASO COUNTY SHERIFF'S §
DEPARTMENT, §
EL PASO COUNTY SHERIFF LEO §
SAMANIEGO IN HIS OFFICIAL §
CAPACITY, §
EL PASO COUNTY SHERIFF'S §
DEPUTY, DETECTIVE NEIL BAKER §
IN HIS INDIVIDUAL AND IN HIS §
OFFICIAL CAPACITY, §
EL PASO COUNTY SHERIFF'S §
DEPUTY, DETECTIVE JERRY KEITH §
IN HIS INDIVIDUAL AND IN HIS §
OFFICIAL CAPACITY, §
§
GAIL BEACH, §
AERO FREIGHT, INC., §
CHRIS HINES §
§
DEFENDANTS. §
§

PLAINTIFFS' THIRD AMENDED ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, MARK B. RASMUSSON, individually, Rasmark Jet Charter, Inc., Deborah L. Rasmusson, individually, and Andrew A. Gantkessy, individually (hereafter referred to as "Plaintiffs") by and through their undersigned attorney, Sandra Jackson Sheppard, of the firm of Sheppard and Associates and complaining of (agents or employees of the United States Customs Service ("USCS")), Lawrence E. Frost, George J. Weise, Carol B. Hallett, John E. Hensley, Donald L. Reay, Michael T. Lappe, Michael J. Wilczewski, Fred J. Schroeder, Walter J. King, Larry Brown, and Eric Mills; (agents of the Drug Enforcement Administration ("DEA")) Steven E. Perkins, Eli P. Chavez, Raphael Aguirre, and Tom Lenox; (agents of the Internal Revenue Service ("IRS")) Fonda Hivick, and Robert L. Martinez; (agent of the Federal Bureau of Investigation ("FBI")) Joe Acosta; United States Customs Service. All the Defendants specified in this paragraph are collectively referred to as ("Federal Defendants"). City of El Paso, El Paso Police Department ("EPPD"), Chief of Police Russ Leach, EPPD Officer George L. Salas, EPPD Officer James Holland, County of El Paso, El Paso County Sheriff's Department ("EPSD"); El Paso County Sheriff Leo Samaniego, EPSD Detective Neil Baker, and EPSD Detective Jerry Keith. All the Defendants specified in this paragraph are collectively referred to as ("State Defendants"). Defendant Gail Beach ("Beach"),a private person who acted in concert with both the federal and state Defendants, at all times relevant to this lawsuit, is a United States citizen and resident of the State of Texas, City of El Paso. Gail Beach is responsible for damages suffered by Plaintiffs. Aero Freight, Inc., is a corporation organized under the laws of the State of Texas with principal office in the Western District of Texas. Aero Freight, Inc., is responsible for damages suffered by Plaintiffs as specified herein. Defendant Christopher (Chris) Hines ("Hines"),a private person who acted in concert with both the federal and state Defendants, at all times relevant to this lawsuit, is a United States citizen and resident of the State of Texas, City of El Paso. Chris Hines is responsible for damages suffered by Plaintiffs

JURISDICTION

(1) This action is brought by each Plaintiff individually against each respective individual federal Defendant, acting under color of his/her federal authority, for violating Plaintiffs rights protected by First, Fourth, Fifth Amendments to the Constitution of the United States and other federal law.

(2) This action is brought by each Plaintiff individually against each respective individual El Paso Police Department officer named herein and each respective individual County of El Paso deputy sheriff named herein who, acting under the color of the laws, statutes, ordinances, regulations, policies, customs, or usages of the State of Texas, County of El Paso, and the City of El Paso, violated Plaintiffs rights, privilege and immunities secured to Plaintiffs by the First, Fourth, and Fourteenth Amendments to the Constitution of the United States and other federal law.

(3) Plaintiff's cause of action against the federal defendants arise directly under the Constitution of the United States. Plaintiffs invoke this Court's federal question jurisdiction pursuant to 28 U.S.C. § 1331 and bring this lawsuit against federal defendants in their individual capacity and private defendants acting under color of law under the Bivens Doctrine.

(4) Plaintiff's cause of action against the United States Customs Service ("USCS") under the Privacy Act, 5 U.S.C. § 552a is brought pursuant to 5 U. S. C. §§ 552a(g)(1)(C) and 5 U. S. C. §§ 552a(g)(1)(D) which specifically authorize a private right of action to bring suit against the federal agency for violations of the Privacy Act.

(5) Plaintiff's cause of action against the officers of the El Paso Police Department and private defendants acting under color of law arise under 42 U.S.C. §§ 1983 and 1988.

(6) Plaintiff's cause of action against the officers of the El

Paso County Sheriff's Department and private defendants acting under color of law arise under 42 U.S.C. §§ 1983 and 1988.

(7) Laws of the State of Texas, Texas Tort Claim Act, § 101.001 et seq. and Texas Constitution art. 5 § 8 triggers state law claims on civil conspiracy, gross negligence, tortious interference with business relationship, tortious interference with prospective contract, tortious interference with contract relationship, and tortious interference with employment contract.

(8) Plaintiffs invoke this Court's diversity of citizenship jurisdiction under 28 U.S.C. § 1332 as to those defendants who do not reside within the Western District of Texas.

(9) Plaintiffs invoke this Court's jurisdiction to adjudicate Plaintiffs' causes of action to redress and recover damages for deprivation of Plaintiffs' constitutionally protected civil rights and privileges under 28 U.S.C. § 1343(a)(1-4).

(10) Plaintiffs assert their state law claims under federal court's pendent jurisdiction as expanded by 28 U.S.C. § 1367. Plaintiffs bring both their claims for redress under the laws of the State of Texas and their claims for redress under federal law, and the First, Fourth, Fifth, and Fourteenth Amendments to the United States Constitution and other federal law.

VENUE

(11) This Court has venue pursuant to 28 U.S.C. § 1391 and is proper in this district because it is where the majority of the parties reside and where the majority of the illegal and unconstitutional acts by the Defendants took place.

PLAINTIFFS

(12) During all times relevant to this lawsuit, Plaintiffs Mark B. Rasmusson, Deborah L. Rasmusson, and Andrew A. Gantkessy are

each respectively a citizen of the United States, and residents of El Paso County, Texas which is in the Western District of Texas.

(13) During all times relevant to this lawsuit, Plaintiff RASMARK JET CHARTER, INC. ("RASMARK") is a corporation organized and chartered under the laws of the State of Texas with principal office and registered agent located at 6915 Boeing Dr., El Paso, Texas which is within the Western District of Texas. At all times relevant to this lawsuit, Rasmark was owned by Mark B. Rasmusson and Deborah L. Rasmusson.

(14) Plaintiff, Mark B. Rasmusson, is the president of RASMARK. Andrew A. Gantkessy ("GANTKESSY") is a former traffic manager for the Ford Motor Company, Favesa Warehouse.

(15) Beginning in or about 1987 and continuing to the present time agents of the U.S. Customs Service, Drug Enforcement Administration, Federal Bureau of Investigation, Internal Revenue Service, acting under color of their respective federal authority, officers of the El Paso Police Department, deputies of the El Paso County Sheriff's Department, acting under color of the laws, statutes, ordinances, regulations, policies, customs, and usages of the State of Texas, County of El Paso, and City of El Paso (collectively referred to as "AGENTS") and private persons, acting under both color of federal and state law, jointly and severally participated in violation of clearly established rights of Plaintiffs protected by the First, Fourth, Fifth, and Fourteenth Amendments of the United States Constitution, and other federal law as protected by the provisions of the Privacy Act, 5 U.S.C. § 552a.

DEFENDANTS

(16) During all times relevant to this lawsuit, Defendant USCS is a lawful agency of the federal government and Defendants, Lawrence E. Frost ("FROST"), Donald L. Reay ("REAY"), Michael T. Lappe ("LAPPE"), Michael J. Wilczewski ("WILCZEWSKI"), Fred J. Schroeder ("SCHROEDER"), Walter J. King ("KING"), Larry Brown

("BROWN") and Eric Mills ("MILLS"), Steven E. Perkins ("PERKINS"), Tom Lenox ("LENOX"), Fonda R. Hivick ("HIVICK"), Robert L. Martinez ("MARTINEZ"), Joe Acosta ("ACOSTA"), and are respectively employed by the federal government as law enforcement agents and they are citizens of the United States and residents of El Paso County, Texas. Each respective Defendant named in this paragraph is individually and jointly responsible for damages to Plaintiffs. Each person individually named in this paragraph is employed by the an agency of the federal government and is sued in his or her individual capacity respectively.

(17) During all times relevant to this law suit, Defendants George J. Weise ("Weise" USCS Commissioner from January, 1993 through the present time), Carol B. Hallett ("HALLETT" USCS Commissioner between November, 1989, and January, 1993), John E. Hensley ("Hensley" Assistant Commissioner for USCS Office of Enforcement between February, 1990 and April, 1994, at USCS Headquarters, Washington D.C.), all of whom are respectively employed by the federal government as law enforcement executives or managers of the U. S. Customs Service and who are citizens of the United States. Carol B. Hallett, George J. Weise, and John E. Hensley are individually and jointly responsible for damages to Plaintiffs. Each Defendant named in this paragraph is sued in his or her individual capacity respectively.

(18) Defendant El Paso Police Department is a department of government controlled by the City of El Paso which is a municipal corporation duly incorporated under the laws of the State of Texas. Chief of the El Paso Police Department, Russ Leach ("LEACH"), is sued in his official capacity only. At all times relevant to this lawsuit, Chief Leach is a resident of the City of El Paso. At all times relevant to this lawsuit, Chief Leach is the highest ranking law enforcement officer employed by the City of El Paso. Chief Leach is responsible for damages to Plaintiffs.

(19) At all times relevant to this lawsuit, Defendants George L. Salas ("SALAS") and James Holland ("HOLLAND") are United

States citizens and are residents of El Paso County, Texas. George Salas and James Holland are employed in the El Paso Police Department. Salas and Holland, are sued in their respective official and individual capacities. Salas and Holland are individually and jointly responsible for damages suffered by Plaintiffs.

(20) Defendant County of El Paso is a unit of government organized under the laws of the State of Texas and the Texas Constitution. The County of El Paso is responsible for damages suffered by Plaintiffs.

(21) Defendant El Paso County Sheriff's Department is a department of government controlled by the County of El Paso. El Paso County Sheriff, Leo Samaniego ("SAMANIEGO") is the highest ranking law enforcement officer employed by the County of El Paso. Sheriff Samaniego, is sued in his official capacity only. At all times relevant to this lawsuit, Sheriff Leo Samaniego is a resident of the County of El Paso. Sheriff Leo Samaniego is responsible for damages to Plaintiffs.

(22) Defendants Neil Baker ("BAKER") and Jerry Keith ("KEITH") are employed by the County of El Paso Sheriff's Department. At all times pertinent to this law suit, Neil Baker and Jerry Keith were citizens of the Unites States and are residents of the County of El Paso. Neil Baker and Jerry Keith are sued in both their official and individual capacities respectively. Neil Baker and Jerry Keith are individually and jointly responsible for damages sustained by Plaintiffs.

(23) Defendants Gail Beach ("BEACH"), Aero Freight, Inc., ("AERO FREIGHT") and Christopher Hines ("HINES") are private persons who acted in concert with both the Federal and State Defendants. At all times pertinent to this lawsuit, Gail Beach, Aero Freight, Inc., and Christopher Hines were citizens of the United States and are residence of the County of El Paso.

PLAINTIFFS ALLEGE AND COMPLAIN AS FOLLOWS:

BACKGROUND: MARK RASMUSSON'S INHERITANCE

(24) Mark Rasmusson's father, Mr. Marlin B. Rasmusson's died on May 1, 1979 and left an estate valued at several million dollars which was to be divided 40% to Mark Rasmusson, 40% to Robert Rasmusson, and 20% Janet Wherry. The moneys were to be paid 1/3 in 5 years, another 1/3 in 10 years and the balance 1/3 in 15 years from May 1, 1979. However, in the meantime, Robert Rasmusson died in an accident on July 15, 1981, and the estate was now divided between Mark B. Rasmusson 60% and Janet Wherry received 40%. Between July 15, 1981 and November 18, 1985, Mark B. Rasmusson received $1,165,853.23 and Janet Wherry received $205,000.00 and the balance in the estate to be distributed was $657,104.70.

(25) Mark Rasmusson's mother, Vera Rasmusson, died on August 29, 1980, and her entire estate was willed to Mark and Robert Rasmusson divided equally. In the event of the death of either son, the remaining survivor would inherit the entire estate. Janet Rasmusson's trust was to pay Mark Rasmusson 1/3 of the estate on Mark Rasmusson's 25th birthday, 1/3 on his 30th birthday and the balance 1/3 on his 35 birthday. Mark B. Rasmusson inherited both his mother's estate and his brother's estate which was approximately valued at $1,052,230.60. The probate records reflect that the Rasmussons made their substantial wealth through their own hard work and investment in their communities, such as State of California, Health Science Bonds, San Diego Unified School Bonds, California Community College Bonds, Los Angeles Dept. Of Water & Power Bonds, etc., and stocks and bonds of a host of businesses, as well as their own personal businesses. All this information is easily accessible in the public probate records in the County of Sacramento, California.

(26) In 1982, Mark Rasmusson purchased Lear Jet model 24 tail number 234MR and started his air charter business as a sole proprietorship in Stateline, Nevada. The business was successful and he incorporated the business as Rasmark Jet Charter, Incorporated in Reno, NV in 1984. By 1984 with his inheritance and business earnings, Mr.

Rasmusson purchased two additional Lear Jet aircraft and leased an additional one. Rasmark Jet Charter, Incorporated provided jet charter for passengers, freight, and ambulance services. RASMARK was doing well in the freight business and sought to expand it's freight business. The FAA issued Rasmark Jet Charter Inc Air Carrier Certificate number J0GA280F on February 1, 1987 RASMARK moved to El Paso in 1987. Rasmark Jet Charter, Inc was incorporated in Texas on April 28, 1989, Texas Certificate of Incorporation number 1112770, and RASMARK sought to continue developing its air freight service to the automotive industry. All the information pertaining to the RASMARK aircraft is easily accessible in the public records of FAA where title searches and history of the aircraft is maintained.

(27) At the time RASMARK moved from Reno, Nevada to El Paso in 1987, two of its Lear Jets were free and clear, one was financed, and the other was leased. During the period 1984-1987 Gail Beech at Arrow Freight acted as a freight broker for Rasmark Jet Charter, Inc. In 1987 Ms. Beech placed Rasmusson under exclusive contract which time was a period in which the air freight business was experiencing boom. Ms. Beech decided to purchase a Lear 25 and became a direct competitor to RASMARK. It was this decision by Ms. Beech that led to the termination of the exclusive contract between Aero Freight and RASMARK.

FACTS, INCIDENTS AND OVERT ACTS AT ISSUE.

Background - Task Forces

(28) Congress, prior to the events, acts, and conduct of the Defendants in this lawsuit, enacted legislation that permit the forming and funding of Federal-State Narcotics Task forces. In 1991 Texas state and local narcotics enforcement agencies became eligible for special funding under the High Intensity Drug Trafficking Area program (HIDTA). This program, under the Drug Czar and the Office of National Drug Control Policy, (ONDCP) made special funding available to federal, state, and local narcotics enforcement agencies located in certain designated counties along the Mexican Border. HIDTA funding was available as long as the agencies followed investigative guidelines

and conducted investigations which addressed HIDTA priorities.

(29) The HIDTA funds flowed from ONDCP to the Texas Governor's Office then through the TNCP Director's office down to the individual HIDTA designated counties. As in the case of the U. S. Department of Justice, through the Bureau of Justice Assistance (BJA) funds, the HIDTA funds were considered federal funds but no matching funds were required on the part of the counties. A major priority of the HIDTA program from 1991 forward was money laundering and all HIDTA funded agencies, federal, state, and local, were pressured to participate in multi-agency money laundering task forces. The El Paso County HIDTA funds were used to create a special investigative unit, under the direction of the Project Director of the El Paso Metro Narcotics Task Force. This new investigative unit, the HIDTA task force, was staffed by officers from the El Paso Sheriff's Department (EPSD) and the El Paso Police Department (EPPD). The mission of the HIDTA Task Force was to conduct in-depth investigations on selective cases developed by the interdiction task force, El Paso Metro. The HIDTA investigators were tasked to identify major smuggling organizations, locate and identify their financial assets, and to disrupt the organizations by seizing assets and coordinating more complicated prosecutions.

(30) Another funding mechanism for task force cases is have a case designated as an Organized Crime Drug Enforcement Task Force (OCDETF), where either the DEA, FBI, USCS, or IRS would act as the lead federal agency, along with members from other federal agencies, Texas Department of Public Safety (DPS), EPPD, and EPSD. The OCDETF designation is approved by a multi-agency OCDETF Committee, and only major money laundering and drug interdiction. cases are suppose to be approved and funded by the OCDETF Committee.

(31) Later, possibly in 1992, USCS assigned investigative agents and support personnel, also funded through the HIDTA program, to work with the EPSD and EPPD HIDTA investigators at an office provided by the EPSD in the same building where the El Paso Metro

Task Force was located.

(32) On or about March of 1992, USCS agents joined forces with the EPSD and EPPD investigators, along with agents from the Federal Bureau of Investigation (FBI), Internal Revenue Service (IRS), and assistance from the Drug Enforcement Administration (DEA), culminating in the USCS Financial Task Force (FTF).

INVESTIGATIONS PRIOR TO 1992

(33) From approximately 1987 to March of 1992, the USCS agents, with the agreement and assistance of federal agents from DEA, FBI, IRS and local police officers from the City of El Paso Police Department (EPPD) and the County of El Paso Sheriff's Department, and private persons, who acted in concert with both the federal and state Defendants, have pursued a common goal of ruining the business of Rasmark Jet Charter, Inc. (RASMARK). Obtaining all of RASMARK's assets is a powerful incentive to both the federal and state Defendants that is built into the forfeiture laws. The goal of both the federal and state Defendants was to steal the assets of RASMARK under the shield of a bogus investigation and a subsequent sham prosecution. The downfall of a major competitor is a powerful incentive to private persons to go beyond just doing their duty as a concerned citizen. The goal of the private Defendants were to aid and abet both the federal and state Defendants by providing them with inflammatory half truths, misinterpretations, misrepresentations, misleading statements, rumors and outright fabrications.

(34) Both the federal and state Defendants intentionally, deliberately, with malice and reckless disregard for the constitutional rights of the Plaintiffs, acting jointly and severally, and in concert with the private Defendants, implemented a plan to shut down RASMARK by carrying out a pattern of harassment, intimidation, coercion and retaliation against the Plaintiffs with the goal of bringing about a successful prosecution for either drug smuggling, money laundering, violations of the Bank Secrecy Act, kickback or payoff schemes, tax evasion, and or all of the aforementioned violations. The plan included

a campaign to disclosure inflammatory allegations, half truths misrepresentations, misinterpretations, misleading statements, rumors, and outright fabrications to the friends, family and business associates of the Plaintiffs and to the customers of RASMARK and the employer of Andrew A. Gantkessy.

(35) For Mark and Deborah Rasmusson (M. RASMUSSON and D. RASMUSSON) their awareness of this governmental nightmare began in or about May 22, 1989, when out of desperation they wrote a letter to Senator Ted Kennedy, who had recently used the charter services of RASMARK, seeking some kind of relief from what they were perceiving as "Nazi Gestapo" tactics being used by the United States Customs Service (USCS) toward them personally and in particular toward their company RASMARK, (see Exhibit 1).

(36) Examples of "Nazi Gestapo" tactics that the Rasmussons and RASMARK were complaining about is clearly exemplified in the following two incidents, October 1988 and July 1990.

(37) On or about October 6, 1988, RASMARK dispatched one of its jets to Brownsville, Texas to pick up cargo for delivery in Youngstown, Ohio. The aircraft was piloted by Jerry Burnett ("BURNETT") and this trip was his first as a captain for RASMARK. Two copilots accompanied BURNETT on this trip. The crew waited in Brownsville for an hour and a half; but no cargo arrived. BURNETT contacted the RASMARK dispatcher who ordered RTB (return to base). BURNETT was in the cockpit starting the engines and the two copilots had just entered the plane and were in the process of closing the air stair door when six or seven men with machine guns, pistols and shotguns surrounded the aircraft and ordered the crew to exit the plane. Later these men were identified as agents of the U. S. Border Patrol.

(38) BURNETT had one engine in the middle of the starting procedure and the turbine was coming up to speed. The copilots were outside the aircraft and in custody. An agent put his head in the aircraft doorway and hollered at BURNETT to "get out of the plane now".

When BURNETT did not immediately get up and exit the aircraft, the agent became hysterical, hollering and making demands and threats.

(39) BURNETT could not exit the aircraft while the engine was in the middle of the start sequence because to do so would pose a most serious fire hazard where unburned fuel would have remained in the engine and it was essential that BURNETT monitor the engine during the time the turbines were spooling down. This process took a minute or two to complete before BURNETT could safely exit the aircraft.

(40) Upon exiting, a fat agent with a shotgun immediately poked the gun into BURNETT's belly. The agent was shaking badly and BURNETT feared the agent would accidentally pull the trigger. The agent in charge told BURNETT that they were Border Patrol agents and that they had customs authority under a recent federal act in 1988.

(41) The agent in charge requested identification. One copilot reached into his back pocket for his ID and as he did several agents instantly moved to point their guns on the copilot. This attack scared the copilot so much that he literally let loose and messed in his pants. BURNETT asked the agent in charge if BURNETT could obtain the copilot's ID. However, the fat agent kept the shaking shotgun poked into BURNETT's belly as BURNETT got the copilot's ID.

(42) BURNETT told the agent in charge to search the aircraft and that he would open any panel that the agent wished to search. The agents searched the plane. The agents were in constant radio communication with their headquarters. The agents finally lowered their weapons as they turned to leave. It took an additional 30 minutes for the copilot to calm down enough to fly. On flight plan, BURNETT returned the jet to El Paso base

(43) The BP agents were acting on orders from U. S. Customs. The agents did not have a shred of probable cause on which to justify the unprovoked raid on RASMARK's jet aircraft.

(44) On or about July, 1990 or mid-summer, the RASMARK dispatcher directed BURNETT to fly to Del Rio to pick up passengers. Upon BURNETT's return to El Paso, BURNETT was stopped by three U. S. Customs vehicles. BURNETT was ordered to clear Customs by the agents in the cars. The agent told BURNETT that he had crossed into Mexican air space and as such as required to clear customs. BURNETT adamantly denied this allegation.

(45) BURNETT told the agent that he had been on a flight plan and was under constant direction from Air Traffic Control. As the agent became insistent and adamant about making BURNETT clear customs, two of the customs cars left and the agent was the only one left talking to BURNETT. Finally, the agent stated that he would let BURNETT get by this time. However, BURNETT was not satisfied and requested the copilot call ATC (air traffic control) and order a copy of the radio and radar tapes. BURNETT told the agent to arrest him so that the matter could be taken to court. The agent just left without further comment.

(46) After the May 21, 1989 incident referred to in the Rasmussons' letter, Mark Rasmusson filed a written complaint with the U.S. Customs District Office in El Paso, Texas. On or about June 7, 1989, Mark Rasmusson received a letter from Mike Mack, the District Director, El Paso, Texas who essentially denied and explained away the allegations in Mark Rasmusson's complaint, (see Exhibit 2).

(47) On or about June 8, 1989, Mark and Deborah Rasmusson received a letter from Senator Kennedy in which he states he referred the letter of complaint to the Senate Finance Committee, which oversees the United States Customs Service, (see Exhibit 3).

(48) On or about June 16, 1989, Mark Rasmusson wrote another letter to Senator Kennedy in which he informs Senator Kennedy that he had received a response from the USCS that glossed over his complaints, (see Exhibit 4).

(49) On or about June 20, 1989, Mark and Deborah

Rasmusson received a letter from Senator Lloyd Bentsen in which he states, "Thank you for your recent letter concerning inspections at the El Paso Airport by U.S. Customs officials. In an effort to be of assistance to you, I have been in touch with the Customs Service on your behalf, and will contact you as soon as I have something substantive to report. I appreciate having the opportunity to assist you.

(50) On or about July 27, 1989, Mark and Deborah Rasmusson received another letter from Senator Bentsen in which he states, "Enclosed is a copy of an interim report I received recently in response to my inquiry on your behalf. I will be in touch with you again as soon as I receive any further word," (see Exhibit 5).

(51) The enclosed letter referenced by Senator Bentsen (dated July 18, 1989), addressed to The Honorable Lloyd Bentsen and from Charles R. Parkinson, Associate Commissioner for Congressional and Public Affairs, Department Of The Treasury, U.S. Customs Service, Washington, D.C., states "This is to acknowledge receipt of your letter dated June 20, 1989, wherein you stated that your constituents, Mark & Debra Rasmusson, are experiencing difficulties clearing Customs. We wish to advise you that we are looking into this matter and will respond to you further as soon as possible" (see Exhibit 6).

(52) On or about October 10, 1989, Mark and Deborah Rasmusson received another letter from Senator Bentsen in which he states "Enclosed is a copy of the report I have received from officials of the Customs Service in response to my inquiry on your behalf. I trust this information will be of use to you and that you will find the report self-explanatory. It has been my pleasure to look into this matter. If I may be of service in the future, please let me know," (see Exhibit 7).

(53) The enclosed letter referenced by Senator Bentsen dated October 2, 1989, addressed to The Honorable Lloyd Bentsen and from Michael H. Lane, Acting Commissioner, The Commissioner of Customs, Washington, D.C., is obviously a general letter promoting the virtues of USCS and not addressing the allegations of Mark and Deborah Rasmusson, (see Exhibit 8).

(54) Unknown to Mark and Deborah Rasmusson, the Customs Service in cooperation with other federal agencies had initiated an investigation of them at least one to two years prior to their letter to Senator Kennedy in May of 1989, which resulted in federal agents interviewing RASMARK current & former employees, business associates, customers, and friends and family.

(55) With the voluminous documentation in the Federal Aviation Administration (FAA) files and in USCS' own files in the El Paso District Office, all easily accessible to the AGENTS, the AGENTS would have easily learned that RASMARK has always complied with governmental regulations or brought itself in compliance when any irregularities were brought to its attention by one of the regulatory agencies.

(56) Clearly, a history of compliance is notice to the AGENTS to carefully check out the background of the company before initiating a full-scale investigation based on inflammatory half truths, misinterpretations, misrepresentations, misleading statements, rumors and outright fabrications. However, the AGENTS in their recent depositions acted as if background information was unimportant and of no consequence.

(57) Defendant FROST, on behalf of himself, USCS, and other members of the FTF, testified he did an EPIC search, however, he could recall no specifics without the case files; of course, he did not bring any case files to the deposition. He testified he requested all participating agencies to provide any information they had or informant debriefings; yet, FROST testified that they seized an aircraft, N7GP, that possibly belonged to either Guillermo Portillo or RASMARK. A simple check of the FAA Aircraft Registry would have revealed the entire title history and would have shown that only PORTILLO was listed as owner, while RASMARK legally listed N7GP on its Air Taxi Certificate and later filed and perfected a mechanics lien on the aircraft after PORTILLO failed to pay his outstanding RASMARK invoices for hangar, maintenance and charter services rendered.

(58) Defendant LENOX, on behalf of himself, DEA, and other members of the DEA OCDETF task force, testified in his deposition that during the DEA OCDETF investigation of Jesus Flores, a well-documented criminal by DEA from as early as 1984, he did not do any type of background check on Mark B. Rasmusson before initiating the DEA OCDETF investigation against him.

(58) Defendant SALAS, on behalf of himself, EPPD, and other members of the FTF, testified that after he accepted employment with the Rasmussons to do private security and bodyguard work, he then got concerned and decided to check the EPPD records, and when he found that information to be insufficient, he then contacted a friend of his who works for the FBI and asked him to check out the Rasmussons so he could determine whether he should continue to work for them. However, the result of SALAS' background check led to SA FROST contacting him and SALAS agreeing to provide information about the Rasmussons to FROST, USCS, and other members of the FTF. Obviously, SALAS became an undercover law enforcement informant for USCS and the FTF.

(59) Defendant HIVICK, on behalf of herself, IRS, and other members of the FTF, testified she probably did a background check on all of the Plaintiffs, which would have included a check through TECS, of airplane tail numbers in the TECS system to see about international flights, through database that contains the CTRs and CMIRs. She further testified that she didn't learn anything from those records that would have led her to believe that M. RASMUSSON was engaged in, or engaging in, any type of criminal activity related to drug smuggling or money laundering, violations of the Bank Secrecy Act, tax evasion, mail fraud.

(60) Defendant HOLLAND, on behalf of himself, EPPD, and other members of the FTF, testified in his deposition with respect to the interrogation of Plaintiff GANTKESSY on June 2, 1993, in which he participated, prior to that occasion he did not do any type obtain on his own or receive from the FTF any type of background information of Plaintiff GANTKESSY. He further testified that prior to the June 2,

1993 interrogation, he didn't have any information that would have led him to believe that Plaintiff GANTKESSY was involved in any kind of criminal activity.

(61) Defendant SCHROEDER, on behalf of himself, USCS, and other members of the FTF, testified in his deposition that before getting started with the FTF assignments, he did not do any background checks on any of the Plaintiffs. With respect to checking the FAA records, SCHROEDER testified that he believes that information to be classified as an investigative technique and that he didn't think he can testify one way or the other if he did that. With respect to the IRS databases, SCHROEDER again replied "that's an investigative technique that I do not believe I can testify about." With respect to checking the case files, databases or interviewing other law enforcement agents who worked closely in the previous DEA OCDETF investigation of Jesus Flores, in which Plaintiff M. RASMUSSON was indicted, SCHROEDER testified either "no" or "not that I recall".

(62) Defendant MILLS, on behalf of himself, USCS, and other members of the FTF, testified that he doesn't think he did any type of background check to see what information he could find out about M. RASMUSSON.

(63) Defendant ACOSTA, on behalf of himself, FBI, and other members of the FTF, testified that during a meeting with his supervisor and some personnel from Customs, they went over to USCS' offices and they explained what they were looking at, if the FBI wanted to join the investigation, what assistance they (FBI) could provide. However, when asked what information he was given, AUSA ROBINSON objected to the form of the question, saying it was irrelevant to the issues of qualified immunity, preventing ACOSTA from revealing the nature of any type of suspicion or probable cause as the basis of continuing the USCS investigation (which FROST testified was initiated in or about 1989 by USCS with John PETERSON as the case agent, although the Plaintiffs documentation show a much earlier time period) through the FTF

(64) Defendant BAKER, on behalf of himself, EPSD, and other members of the FTF, testified that he did receive a background briefing of the Plaintiffs; however, he was prevented from testifying to what information he was given by the Assistant County Attorney CASTILLO, on the grounds that BAKER's response might reveal information which protected by the grand jury privilege and also might be protected by the investigative privilege.

(65) The pattern of all the federal and state Defendants suddenly engaging in obstructive tactics to prevent the Plaintiffs from uncovering the true facts leads to the reasonable inference that the Defendants orchestrated a bogus and sham investigation against all of the Plaintiffs.

(66) In addition, RASMARK 's aircraft were frequently searched without a warrant and without probable cause when the flights were purely domestic. The strip searches of passengers and crew exceeded reasonable bounds, causing, embarrassment, harassment, and intimidation of the flight crews and passengers. These Customs agents often would not identify themselves before or after they completed their mission of harassment and intimidation. The following occasions of searches of RASMARK aircraft in June and September of 1993 are representative of the type of unlawful searches implemented by the USCS and FTF.

(67) On or about June 1, 1993, RASMARK pilot Bill Jiles, filed a flight plan to fly the Falcon to Brownsville. However, the customer called and the flight plan was canceled. Certain maintenance was being carried out on the Falcon and JILES taxied the Falcon to the run-up area on El Paso International Airport. After completing the engine run-up, JILES taxied Falcon to the RASMARK hanger and two cars of federal agents and other members of the FTF followed the plane. RASMARK employee, Julio Parra, walked to where the Falcon stopped and put chocks on the wheels. FROST, SCHROEDER, EPPD Defendant HOLLAND, on behalf of themselves, USCS and the FTF, asked Mr. Parra to go with them to their office for a talk. Mr. Parra declined the invitation and stated that RASMARK was not doing

anything wrong and he had nothing to talk to the agents about.

(68) JILES did accompany the agents to their office at Cutter Beechcraft. The agents were interested in how many passengers were in the plane. None, because the plane had not gone anywhere. The agents had no cause to stop the plane.

(69) In or about June of 1993 Defendant ACOSTA, on behalf of himself, USCS, and the FTF, subpoenaed the bank records of RASMARK from approximately two banks, one being the State National Bank and the others unknown at this time.

(70) On June 16, 1993, RASMARK dispatched pilot Mr. David Jackson and copilot Mr. Bertilsson to Douglas, AZ to pickup 105 pounds of seat belts for Allied Signal, Inc., and deliver the cargo to Mark III Industries in Ocalla, Florida.

(71) The flight plan called for stopping in Dallas Love Field to refuel. At Dallas Love Field, the plane pulled off the runway and on to the taxi way. A vehicle had the taxi way blocked. Mr. Jackson called ground control to inquire about the vehicle which was later identified as a Dallas Police car.

(72) A USCS Citation jet pulled up behind RASMARK's Lear Jet; and a USCS helicopter hovered directly above the Lear Jet with its search light shining on RASMARK's aircraft.

(73) A van pulled up near the jet and approximately ten (10) U. S. Customs agents and Dallas Police officers surrounded the RASMARK jet in a semicircle with guns drawn pointed at the plane. No agent came forward to identify himself as in charge of the raid. The copilot, Mr. Bertilsson, opened the top half of the exit door. The agents ordered him to keep his hands where they could be seen and to exit the jet. Keeping his hands in front of himself, he climbed over the lower half of the door and landed on the concrete. The pilot, Mr. Jackson, was still in the plane.

(74) Mr. Bertilsson was ordered to kneel on the tarmac, cross his ankles and put his hands on the top of his head. He complied. The agents placed handcuffs on Mr. Bertilsson and put him in the van. The driver of the van sped to the west side of the field where he stopped and got out to talk to other agents.

(75) The pilot, Mr. Jackson, was ordered to get out of the jet and to keep his hands so the agents could see them. Mr. Jackson complied and exited the plane in the same way as the copilot. Mr. Jackson was ordered to kneel on the tarmac with his hands on his head. One agent had a gun pointed at Mr. Jackson's head. Jackson was taken away from the plane and questioned about the cargo.

(76) An agent ordered Mr. Jackson to move the plane to the Jet East building on the East side of the field. One agent went with Mr. Jackson in the Lear jet as it was taxied to Jet East building.

(77) A female agent asked if Mr. Jackson would sign a consent to search form. Mr. Jackson asked "what if I refuse?" "If you refuse then I will have to keep you overnight until we can get a search warrant", said the agent. Mr. Jackson stated that was unacceptable since the cargo was time sensitive and it must be in Ocalla as soon as possible. The cargo must be delivered on time otherwise RASMARK would lose the Allied Signal account. Mr. Jackson did not want to sign the consent to search form and the only reason that he signed the form was to prevent RASMARK from losing the customer.

(78) The three boxes of seat belts were removed from the plane and a narcotics detector dog brought in from El Paso searched the cargo boxes and the interior of the plane.

(79) The agents requested that Mr. Jackson produce the aircraft papers, his pilot's papers and his resident alien card. The agents made copies of the documents.

(80) The dog chewed a hole in one of the boxes and had one of the seat belts in its mouth. The agent then pulled the dog off the boxes.

(81) When Mr. Jackson asked the agent why they had raided his airplane, the agent stated that they received information or a phone call that the plane needed checking. This company has had planes searched before. The agent stated that yes we are familiar with your company and indicated that RASMARK is on a "hit list".

(82) After a few minutes sitting in the van the agents opened the door and let Mr. Bertilsson out. About ten minutes later, the agent took off the handcuffs.

(83) A female agent talked to Mr. Bertilsson. She could not understand why a company would pay for three small boxes to the boxes of car parts. The dog handler offered no reason why the dog reacted to the boxes when there was no narcotics there. Nor did the dog handler offer an explanation as to why the dog chewed the car parts and box.

(84) Mr. Jackson left Gainesville, Florida in the afternoon heading back to El Paso. On arrival in El Paso, there was no further interference by the agents.

(85) This raid was not a spur-of-the-moment action by the AGENTS. Instead, this raid is but one example of what became routine investigative technique carried out by FROST. FROST never had any probable cause nor did FROST think it was necessary in order to search any RASMARK jet on a cargo flight. FROST relied on obtaining consent to search from the RASMARK jet crew because FROST knew that companies who paid for jet cargo service were in a major hurry for prompt delivery of the cargo. Therefore, the threat of delaying a RASMARK cargo flight would always result in obtaining consent to search since the other option was for RASMARK to lose the customer for future cargo business. FROST could have elected to stop a RASMARK jet anywhere in the United States during a time that the federal courts would be open to obtain a warrant. But that would open the possibility that one crew would say get a warrant which FROST knew he could not do. FROST's tactic completely trampled on the constitutional rights of RASMARK, Mark Rasmusson and Deborah

Rasmusson.

(86) On or about September 1, 1993, RASMARK pilot David Jackson was in Dallas at Signature Flight Support when two DEA agents approached and questioned him. The agents said they wanted to search the plane. JACKSON requested to see their search warrant. One agent replied that he did not need a warrant. JACKSON called the RASMARK office in El Paso where he was told that only FAA inspectors could inspect the plane without a warrant. JACKSON repeated this information to the DEA agents. The DEA agent called for an FAA inspector to meet him. They went to the plane and the FAA inspector checked that plane, pilot and copilot papers and looked around inside the plane. The FAA completed the inspection. JACKSON told the DEA agent that if he wanted to inspect the plane he would have to obtain a search warrant. As the agents and inspector were leaving, the DEA agent said "I hope you finish law school soon".

(87) Unknown to Mark and Deborah Rasmusson, USCS Special Agent (SA) John Peterson (PETERSON), other USCS agents, during the period from 1987 through March of 1992 conducted an active Customs Service investigation of them until the case was taken over by another USCS special agent, Lawrence E. Frost (FROST), in conjunction with the USCS Financial Task Force (FTF); the case was later expanded to include Plaintiff Andrew A. Gantkessy.

(88) Out of the entire time that PETERSON, on behalf of himself and the USCS, conducted this investigation against Plaintiffs Mark and Deborah Rasmusson and RASMARK, no criminal charges or indictments were ever filed against any of the Plaintiffs pertaining to money laundering, violations of the Bank Secrecy Act, mail fraud, kickback or payoff schemes, or tax evasion. The inference is clear that the investigation revealed no credible evidence of criminal activity or the Plaintiffs participating or operating any type of criminal enterprise.

(89) Nothing changed about the Plaintiffs in or about March of 1992 when FROST, SCHROEDER, MILLS, BROWN, KING, HIVICK, ACOSTA, SALAS, HOLLAND, BAKER and KEITH took

over the bogus case. Mark and Deborah Rasmusson and RASMARK were still operating their business in a lawful manner.

(90) During the period from 1987 through March of 1992, RASMARK enjoyed tremendous growth in the jet charter business. The primary reason for its success was RASMARK's emphasis on customer satisfaction and competitive prices, often lower than its competitors. Eighty to ninety percent of its business consisted of flying cargo freight for Ford Motor Company, making Ford its primary source of income.

(91) However, RASMARK also provided passengers and ambulance services to the general public. A small charter company offers a highly specialized service in that it charters the entire plane to one customer at a time. The customer pays either a one-way or round-trip fee calculated on whether it's for passenger services or cargo; if cargo, the amount of weight generally determines which plane is used and whether its a one-way or round trip, destination, mileage and other incidental fees depending on circumstances. If for passenger services, generally the number of passengers determines the type of aircraft and of course, the destination, mileage, whether its a one-way or round trip, and other incidental fees depending on circumstances.

(92) The small charter business is not a high volume business because the cost is much greater than flying in a regular commercial aircraft of a major airline. Because of RASMARK's location, its services are used equally by Mexican nationals as well as Americans. RASMARK's goal is to get its customer from point A to point B safely and efficiently so as to make a profit. Small charter services are not required by the Federal Aviation Administration, or other applicable federal agencies, to have the type of security system that the major commercial airlines must operate. Nevertheless, RASMARK is highly security conscious and instruct its pilots and staff to be on the lookout for any unusual circumstances that would lead to a strong suspicion that a potential customer might be engaging in criminal activity. However, were RASMARK to ask its customers to open up their baggage or submit to pat downs and body searches, it

surely would be out of business fairly quickly because customers who are paying thousands of dollars want to feel special and important not like they are going through a regular airlines with the same inconveniences of major airlines.

(93) Therefore, if an individual presents himself in a professional and business-like manner, does not act suspicious or bring any baggage that looks suspicious, and has either cash or credit card, RASMARK will sell its charter services to this individual gladly, or lose opportunity to a competitor.

(94) Prior to FROST taking over the USCS' investigation of the Plaintiffs, several events took place involving a DEA OCDETF investigation of a true criminal enterprise being operated by Jesus Flores (FLORES). State, local and federal law enforcement agencies had investigated FLORES as early as 1984 and watched his organization grow into a major drug smuggling and money laundering operation. From law enforcement undercover work, criminal informants, surveillance to wire taps, the Government learned who the major and minor associates of FLORES were and the sources of his contraband and means of transportation and distribution. Neither Mark B. Rasmusson, Deborah L. Rasmusson or RASMARK were ever part of FLORES' inner circle of associates nor were they identified by DEA as targets in the DEA-6 application for OCDETF status.

(95) Although FLORES engaged in criminal activity, that does not mean that every act ever performed by FLORES was criminal in nature or was for a criminal purpose. Such a noncriminal act occurred in or about February of 1990, when FLORES presented himself to RASMARK in a professional and business-like manner, did not act suspicious, did bring suspicious looking baggage, presented himself as the owner of Vista Remodeling Company, a remodeling business in El Paso, and had the necessary cash to pay for the charter services he requested.

(96) Unknown to Mark or Deborah Rasmusson or to any of the employees of RASMARK, FLORES led a double life as a person

engaging in criminal activities pertaining to drug smuggling and money laundering.

(97) Also unknown to Mark or Deborah Rasmusson, Peter Seaverns (P. SEAVERNS) and Joseph Seaverns (J. SEAVERNS), the owners of Dove Motors Company, a car dealer that sold rather nice expensive used cars and from whom the Rasmussons purchased their cars, led a double life as associates of FLORES, actively engaging in criminal activities. On some occasions when Mark and Deborah Rasmusson would stop by Dove Motors to check out the latest car arrivals, they would also booster their charter services to encourage a mutual exchange of business between Dove Motors or any of Dove Motors's customers, who generally were people with higher incomes; P. SEAVERNS in turn would booster his business and promise to tell his good customers (meaning the ones with the income that could afford private charter services) about RASMARK.

(98) Hence in or about February of 1990 is when FLORES first made his appearance at RASMARK and purchased charter services, which, of course, is what RASMARK is in business to do--sell charter services from point A to point B for a reasonable fee.

(99) At no time during the entire period of time the Rasmussons knew P. SEAVERNS, J. SEAVERNS or FLORES did either of them ever reveal any criminal activity to Mark or Deborah Rasmusson or to the employees of RASMARK. Mark and Deborah Rasmusson learned from the news about the criminal activities of these individuals and were shocked by this news.

(100) Certainly because of the fact that FLORES had purchased charter services from RASMARK gave notice to Mark and Deborah Rasmusson that they might eventually be approached by federal agents investigating FLORES and his associates. That time came in or about August 23, 1990. Mark and Deborah Rasmusson felt it was their duty to fully cooperate and provide whatever information they had in their files pertaining to FLORES to the agents.

(101) However, unknown to Mark and Deborah Rasmusson before their first interrogation by DEA agents on or about August 23, 1990, the Drug Enforcement Administration (DEA), the lead federal agency in the Organized Crime Drug Enforcement Task Force (OCDETF) case against FLORES, had thoroughly investigated FLORES and his organization, using wire taps, surveillance, informants, learned all the details of how FLORES operated, identified his criminal associates, learned how he obtained and transported his drugs and proceeds of his unlawful activities. In other words, the DEA already had its case made against FLORES and his associates. The only purpose of going to RASMARK was to find a way to snare either Mark or Deborah Rasmusson or RASMARK in criminal associates trap. DEA knew that getting an indictment would be easily by presenting Mark Rasmusson along with the true criminal associates to the Grand Jury and creating the appearance that the legitimate charter services were for the purpose of aiding and abetting FLORES.

(102) DEA Group Supervisor ("GS") AGUIRRE, DEA SA's LENOX and PERKINS, were the case agents. Together they orchestrated the investigation against Mark and Deborah Rasmusson and RASMARK. Each of these agents are Defendants in the present case.

(103) According to Defendant LENOX, the DEA OCDETF objectives were to work this investigation in conjunction with the Texas DPS Narcotics Unit, the Internal Revenue Service, and the Immigration and Naturalization Service using electronic surveillance and other investigative techniques. The goal of the agents and officers was to obtain drug and non-drug evidence relative to FLORES and his organization and to identify and seize assets, monies and properties related to profits being made by Flores and his associates through the sale of illicit narcotics.

(104) Unknown to Mark and Deborah Rasmusson before the very first interrogation on or about August 23, 1990, the DEA already had targeted Mark and Deborah Rasmusson and their company, RASMARK for seizure and forfeiture.

(105) Unknown to Mark and Deborah Rasmusson, the DEA already had obtained an indictment against FLORES filed on or about June 20, 1990, at least two months before the DEA's subpoena to RASMARK on or about August 17, 1990 and the first interrogation of Deborah Rasmusson on or about August 23, 1990.

(106) Unknown to Mark and Deborah Rasmusson, prior to the DEA's first interrogation of Deborah Rasmusson, USCS and IRS had initiated a separate investigations of them and RASMARK, (in addition to the PETERSON's investigation in or about 1987 through 1992). The USCS and IRS investigations of RASMARK was joined into and became a part of the OCDETF investigation of Guillermo Portillo, a wealthy Mexican businessman, who USCS and IRS suspected was operating a money laundering scheme. It turned out that no money laundering was taking place but Mr. Portillo may have violated Mexico's laws pertaining to conversion of pesos to dollars or some other financial laws involving transfers of large sums of cash from Mexico to the U. S. and back to Mexico. The Portillo OCDETF investigation was decertified but the RASMARK portion continues to this day. As previously stated, the entire business relationship between RASMARK and PORTILLO is well documented in the FAA Aircraft Registry records easily accessible to PETERSON, FROST, SCHROEDER, MILLS, BROWN, KING, HIVICK, SALAS, HOLLAND, BAKER, and KEITH.

(107) Unknown to Mark and Deborah Rasmusson prior to the DEA's subpoena to RASMARK on or about August 17, 1990 and the first interrogation of Deborah Rasmusson on or about August 23, 1990, the DEA, USCS, and IRS were essentially competitors, competing to get assets RASMARK; the goal was to sweep the law enforcement net over either Mark or Deborah Rasmusson or RASMARK as criminal associates of FLORES, hence obtain a conviction by association. Because FLORES utilized the legitimate charter services of RASMARK and Mark Rasmusson was a pilot and owner of RASMARK, the DEA unlawfully threw Mark B. Rasmusson into the law enforcement net.

(108) Unknown to Mark and Deborah Rasmusson, prior to

the DEA's subpoena to RASMARK on or about August 17, 1990 and the first interrogation of Deborah Rasmusson on or about August 23, 1990, the DEA had a wire-tap tape with one conversation where FLORES initiated a telephone call to RASMARK, asking Mark Rasmusson whether he knew where FLORES could find a Cessna 206 engine; all Mark Rasmusson did was offered the use of his trade publications if FLORES wanted to come in and look through them. Additionally, FLORES initiated conversation about Dove Motors Company's past due balance owed to RASMARK in which he indicated that he would send someone over to pay it. RASMARK being essentially a "mom and pop" corporation, Mark B. Rasmusson had recently gone by FLORES' residence in an effort to collect the overdue invoices on behalf of RASMARK. A company the size of RASMARK whose business depends on personal services would not generally send a collection agency or attorney to collect until all personal efforts of the company have failed; keeping a paying customer often is more important than timeliness of payments.

(109) The DEA took the one telephone call and the one instance RASMARK attempted to collect its overdue invoices and tried to show some type of personal, ongoing criminal relationship between Mark Rasmusson and FLORES. The Government failed to produce any credible evidence during the criminal trial to prove its allegations. FROST, in his two affidavits of November 19, 1993, said he reviewed all of the DEA case files and criminal trial transcript. Yet, FROST repeatedly used uncorroborated informants' information that were supposed to be documented in DEA case files or from the criminal trial transcript; yet this information conflicts with the findings of the DEA OCDETF investigation and the subsequent trial transcript.

(110) FROST states in his two affidavits of November 19, 1993 that "I have received a written report from Federal Bureau of Investigation (FBI) Special Agent Joe Acosta. This report is dated June 7, 1993. This report details an interview conducted with an individual who is referred to as a reliable confidential informant. I have been told by Special Agent Acosta that the confidential informant who provided the information contained in this report had close ties to and was

criminally involved with the high ranking members of the Jesus FLORES controlled substance trafficking organization during the years that FLORES was active.

(111) The FBI confidential source stated that Jesus FLORES and Arturo BERMUDEZ were introduced to Mark RASMUSSON by Pete SEAVERNS in 1988. **The FBI source stated that Mark RASMUSSON became involved in money laundering with FLORES**. The FBI source further stated that Mark RASMUSSON **was** buying aircraft parts with the proceeds of trafficking in controlled substances. The FBI source also stated that Jesus FLORES was involved in money laundering with an individual named Hector SAENZ. Hector SAENZ is a major money laundering suspect currently under investigation by U.S. Customs.

(112) The FBI source stated that **Hector SAENZ** worked with Mark RASMUSSON **and Ricardo VALDEZ** in their money laundering activities. The source stated that he/she had personnel knowledge that in the past Mark RASMUSSON would travel throughout the United States in his aircraft and collect proceeds of trafficking in controlled substances and then deliver the proceeds to the interior of the Republic of Mexico.

(113) The FBI source stated that Mark RASMUSSON received approximately $500,000.00 in controlled substance proceeds from Jesus FLORES during 1989 and 1990. The majority of the money Mark RASMUSSON received from FLORES was used to purchase aircraft parts, aircraft engines and pay expenses incurred during his (Mark RASMUSSON's) money laundering activities. Any person who engages in a financial transaction involving funds which were derived from the commission of trafficking in controlled substances has committed a violation of Title 18 United States Code section 1957." (See **Paragraphs xxx of FROST'S Affidavits of November 19, 1993**)

(114) A thorough search of the DEA case files and the criminal trial transcript reveal no such information that FROST is citing above. The Government presented testimony from both law

enforcement undercover officers (mainly EPPD police officers) and criminal informants (close criminal associates of FLORES). No such information was ever uncover or even intimated at the trial of Mark Rasmusson.

(115) FROST, on behalf of himself, USCS, and other members of the FTF, during his deposition of January 10, 1997, testified that he relied strictly on the reports provided to him by ACOSTA; that he did not interview any of the EPPD officers who participated as undercover operatives for the DEA OCDETF investigation of FLORES; that he did not interview any of the criminal informants who testified during the FLORES criminal trial. Therefore, he did not obtain any kind of independent corroborating evidence of any allegations made in the FBI reports received from Defendant ACOSTA.

(116) ACOSTA, on behalf of himself, FBI, and other members of the FTF, in his deposition of January 24, 1997 was not permitted to answer the question whether he personally interviewed the informant in June of 1993 prior to sending the report to FROST OR in 1990 prior to FLORES' criminal trial or whether he had any first-hand interview with the informant.

(117) ACOSTA, on behalf of himself, FBI, and other members of the FTF, testified, however, that he did not do any type of follow-up investigation pertaining to any information in the report of June 7, 1993 that he sent to FROST; that the information contained in the report was not obtained by him; that the information was obtained by another agent named William May (MAY) and that he did not know what MAY did to corroborate the information.

(118) FROST stated in his two affidavits of November 19, 1993 that "on November 3, 1993 I received a written report from FBI Special Agent Joe Acosta. This report provided information from an FBI confidential source this source is referred to in this report as FBI-1.

(119) According to the FBI report FBI-1 stated that during December, 1991 he/she was inside of the RASMUSSON residence at

11157 Leo Collins Dr. El Paso, Texas. On this occasion FBI-1 saw a large suitcase in Debra RASMUSSON's bedroom closet. Inside of the suitcase FBI-1 reported that he/she saw what appeared to be controlled substances and U.S. currency. FBI-1 reported that the contents of the suitcase were clear plastic bags containing a white powder substance and other packages wrapped in tin foil. FBI-1 further reported that the currency in the suitcase was of various denominations.

(120) FBI-1 also reported that during February, 1992 he/she had seen three or four storage type boxes underneath Debra RASMUSSON's bed and in Debra RASMUSSON's closet. FBI-1 reported seeing business records from RASMARK Jet Charter including fuel bills and statements and flight planning forms. One of the boxes contained 20 to 30 bank statements. The bank statements were from bank in Colorado, Alaska, Cabo San Lucas, Mexico, New York and the Cayman Island.

(121) FROST, on behalf of himself, USCS, and other members of the FTF, during his deposition of January 10, 1997, testified that he relied strictly on the reports provided to him by ACOSTA; that the report corroborated information that they already knew and if it didn't they made attempts to verify it through various interviews or physical evidence.

(122) However, FROST, USCS, and the FTF have the same problem regarding the FBI-1 that they have with the June 7, 1993 report--lack of independent corroboration. The November 3, 1993 report does not indicate that the FBI did any type of follow up investigation or brought any type of charges against the Rasmussons or that the EPPD was summons by the FBI source to retrieve the drugs and currency from the Rasmussons' home. The reason there is no follow up or independent corroboration is because these alleged incidents did not happen.

(123) FROST, on behalf of USCS, ACOSTA, on behalf of the FBI, and both on behalf of themselves and the FTF, attempted to construct an appearance of criminal activities by attempting to link

alleged stale informants' reports of June 7, 1993 and November 3, 1993, without any showing of credibility, veracity and reliability of the informants, to the Rasmussons and RASMARK.

(124) Therefore, when FROST presented this uncorroborated information in his two affidavits of November 19, 1993, the Magistrate Reusch was robbed of her opportunity to make a detached and neutral decision in granting the search warrants.

(125) The same is true for the affidavit of May 26, 1992 that FROST presented to the Magistrate pertaining to the box taken from Deborah Rasmusson on May 23, 1992. The details of this incident is discussed elsewhere in the complaint.

(126) Unknown to Mark and Deborah Rasmusson, prior to the DEA's subpoena to RASMARK on or about August 17, 1990 and the first interrogation of Deborah Rasmusson on or about August 23, 1990, the DEA already had interviewed in or about June 22, 1990 one of FLORES' associates, Luis A. GARCIA, who told the agents that FLORES had chartered RASMARK aircraft to fly some of his family, friends or associates to different locations in both the U.S. and Mexico, with the most recent charter being on or about June 11, 1990. However, because the DEA's reports of investigation were not acknowledged or signed by GARCIA attesting to the accuracy of the alleged statements, the only purpose of these reported statement is to give the appearance that the Rasmussons and RASMARK were participating in promoting FLORES' criminal organization; neither did the Government have GARCIA to testify as a witness in the FLORES criminal trial to testify to the alleged unlawful purpose of the RASMARK charters. When the Court acquitted Mark B. Rasmusson, it stated that the Government failed to produce any evidence that any of the trips flown by RASMARK aircraft were for an unlawful purpose or that Mark Rasmusson or RASMARK did anything after the trip to procure completion of any of FLORES' criminal goals.

(127) Since FROST as the lead case agent, on behalf of himself, USCS, and the other members of the FTF, read all of the DEA

case files and criminal trial transcript, he knew, or should have known, that neither DEA or the Government produced any such evidence of the Rasmussons transporting drugs or currency anywhere in the United States or in Canada or Mexico.

(128) Since FROST as the lead case agent, on behalf of himself, USCS, and the other members of the FTF, read all of the DEA case files and criminal trial transcript, he knew, or should have known, that neither DEA or the Government produced any such evidence of the Rasmussons purchasing $500,000.00 in aircraft parts with the proceeds of drug smuggling from the FLORES' organization.

(129) The fact that FROST, on behalf of himself, USCS, and other members of the FTF, placed this bogus information in the two affidavits of November 19, 1993, again, robbed Magistrate REUSCH of her opportunity to make a detached and neutral decision on issuing the two search warrants.

(130) Unknown to Mark and Deborah Rasmusson, prior to the DEA's subpoena to RASMARK on or about August 17, 1990 and the first interrogation of Deborah Rasmusson on or about August 23, 1990, IRS SA ROBERT MARTINEZ, USCS SA PAUL NEELY and USCS SA FRED SCHROEDER were attempting to connect the Rasmussons and RASMARK to other money laundering investigations such as the GUILLERMO PORTILLO case and to OPERATION TRANSWESTERN.

(131) The one constant problem that FROST, on behalf of himself, USCS, and other members of the FTF could not solve was the fact that the Rasmussons, RASMARK or GANTKESSY were not engaging in any type of criminal activity pertaining to drug smuggling, money laundering, violations of the Bank Secrecy Act, mail fraud, kickback or payoff schemes, or tax evasion. The AGENTS set out to manufacture by harassment, intimidation, coercion and retaliation of the Rasmussons themselves and GANTKESSY to try and make a case.

(132) FROST, on behalf of himself, USCS, and other

members of the FTF, relied heavily on the DEA-6 REPORT OF INVESTIGATIONS that the DEA prepared during their bogus investigation of the Rasmussons and RASMARK, resulting in the indictment of Mark B. Rasmusson. However, neither FROST, USCS, or any other members of the FTF, obtain any independent corroborating evidence of any of the matters in the DEA-6 reports, none of which was signed by the witness or memorialized by tape recorder at the time the alleged statements were made.

(133) Defendants LENNOX, PERKINS, E. CHAVEZ, and AGUIRRE, were responsible for the bogus DEA investigation against the Rasmussons that resulted in the indictment of Mark B. Rasmusson.

(134) On or about August 17, 1990, Defendant PERKINS and Defendant ELI P. CHAVEZ (DEA SA) delivered an administrative subpoena to RASMARK which states, in part,

> "Pursuant to an official criminal investigation being conducted by the Drug Enforcement Administration of a suspected felony, it is requested that your company furnish all files, receipts and/or registration cards, and any other miscellaneous records and information concerning the following: Vista Remodeling, Jesus A. Flores, Joe Peake, Pete Seaverns, Jesus Moncada, Mike Villalba, Juan Lozoya, Arturo Bermudez, Arturo Obregon-Sosa.
>
> You are not to disclose the existence of this request. Any such disclosure could impede the investigation being conducted and thereby interfere with the law."

Mark and Deborah Rasmusson attempted in good faith to comply with all the terms of the DEA Subpoena, (see **Exhibit 9**).

(135) However, unknown to the Rasmussons, the DEA had already targeted them for criminal prosecution, and DEA knew USCS already had an official investigation going against the

Rasmussons at the same time. Defendant SCHROEDER, on behalf of himself and the USCS, was a member of the DEA OCDETF Task Force investigating FLORES and the Rasmussons.

(136) On or about August 23, 1990 and prepared on August 26, 1990, DEA SA PERKINS and SA CHAVEZ went to RASMARK approximately 1:00 P.M. under the pretext to simply check on the return for subpoena #M7-90-512. However, while at RASMARK they proceeded to conduct an in-depth interrogation of Debra Rasmusson. Although PERKINS and CHAVEZ knew Mark and Deborah Rasmusson were under official investigation by the USCS, and that the DEA also were targeting them as co-conspirators of FLORES, PERKINS and CHAVEZ did not advise Debra Rasmusson of her constitutional rights not to answer the agents questions.

(137) Among the documents given in response to the subpoena were some reconstructed invoices, which PERKINS encouraged the Rasmussons to prepare. Since reconstructions of business records is normal for most businesses, if not all, the Rasmussons had no idea that DEA was planning to use these documents against them, (see **Exhibit 10**).

(138) Even though the Government used the reconstructed invoices against Mark B. Rasmusson, which FROST refers to in his two affidavits of November 19, 1993, on or about May 29, 1991, PERKINS and SA Steven WHIPPLE themselves made a reconstructed DEA-6 of their interrogation and consent search of one of FLORES co-conspirator Luis GARCIA. The original DEA-6 written by SA WHIPPLE was misplaced and not relocated, according to PERKINS. Although RASMARK had other original documentation of the FLORES charters, LENOX, PERKINS, E. CHAVEZ and AGUIRRE chose to give a criminal interpretation to some of RASMARK's missing invoices, and the subsequent reconstructions, for the purpose of creating the appearance of criminal activity on the part of the Rasmussons, in that they were supposed to be unlawfully hiding incriminating evidence of their criminal association with FLORES. This issue was fully litigated during the criminal trial and the Government produced no evidence of

any illegality; only normal business practice was shown. Deborah Rasmusson testified as a Government witness and was thoroughly examined on direct and cross.

(139) On or about August 23, 1990 and prepared on September 17, 1990, PERKINS and CHAVEZ went to RASMARK at approximately 3:35 P.M. and conducted an in-depth interrogation of Mark and Deborah Rasmusson and RASMARK's pilot Jerry Burnett. Although PERKINS and CHAVEZ knew Mark and Deborah Rasmusson were under official investigation by USCS and DEA, PERKINS and CHAVEZ did not advise Mark or Debra Rasmusson of their constitutional rights not to answer the agents questions, (see **Exhibit 11**). Jerry Burnett testified as a Government witness and was thoroughly examined on direct and cross.

(140) On or about August 23, 1990 and prepared on August 27, 1990, LENOX, PERKINS and CHAVEZ conducted an in-depth interrogation of Peter Seaverns at approximately 4:00 P.M. at the Holiday Inn, Sunland Park, in which it is reported that, "P. SEAVERNS said that FLORES once called him and told him to go to RASMARK AVIATION and meet him there. P. SEAVERNS thought that he was going to be paid for a jewelry transaction..."; however, RASMARK was not a part of the jewelry transaction or had any knowledge of the underlying purposes of SEAVERNS, FLORES, or any of his associates, (see **Exhibit 12**). No independent corroborating evidence was ever produced to document the Rasmussons or RASMARK as having anything to do with any of FLORES' operations. RASMARK simply sold to VISTA REMODELING COMPANY its legitimate charter services from point A to point B and nothing more; none of VISTA REMODELING COMPANY employees or associates of FLORES ever discuss their criminal business with the Rasmussons or employees of RASMARK. Moreover, P. SEAVERNS made deal with the Government and testified as a Government witness. He was thoroughly examined on direct and cross and no evidence was elicited connecting Mark B. Rasmusson with the inner circle of FLORES or connecting the Rasmussons to participation in any of the FLORES criminal activities. The issues of who were the criminal associates of FLORES were fully

litigated throughout the criminal trial.

(141) Unknown to Mark and Deborah Rasmusson, on or about August 26, 1990 and prepared on September 7, 1990, PERKINS and Immigration Naturalization Service (INS) SA Socorro G. SIMMONS conducted an in-depth interrogation of RASMARK pilot Jerry L. Burnett at approximately 3:40 P.M, (see **Exhibit 13**). Again BURNETT was thorough examined on direct and cross and no evidence of criminal activities was elicited from him. However, the Court did learn during BURNETT's testimony that BURNETT had informed PERKINS of incorrect information attributed to him in one of the DEA-6 reports and that neither PERKINS, or any other member of the DEA OCDETF task force, made any effort to correct the report.

(142) On or about August 27, 1990 and prepared on September 15, 1990, PERKINS and CHAVEZ went to RASMARK at approximately noon and conducted an in-depth interrogation of Deborah Rasmusson and RASMARK's pilot Jim YOUNG. Although PERKINS and CHAVEZ knew Mark and Deborah Rasmusson were under official investigation of the USCS and that the DEA were targeting them as co-conspirators of FLORES, PERKINS and CHAVEZ did not advise Debra Rasmusson of her constitutional rights not to answer the agents' questions, (see **Exhibit 14**). Jim YOUNG also testified as a Government witness and was thoroughly examined on direct and cross, and no evidence of criminal activities was elicited from him connecting the Rasmussons or RASMARK to any criminal activities pertaining to the FLORES organization

(143) On or about August 27, 1990 and prepared on September 1, 1990, PERKINS and CHAVEZ went to Village Inn located at Airway and Montana Avenue at approximately 2:00 P.M. and, by permission of Mark Rasmusson, conducted an in-depth interrogation of one of RASMARK's dispatchers David Chavez, (see **Exhibit 15**). David Chavez also testified as a Government witness and was thoroughly examined on direct and cross, and no evidence was elicited from him connecting the Rasmussons or RASMARK to any criminal activities pertaining to the FLORES organization.

(144) Unknown to Mark and Deborah Rasmusson, on or about August 27, 1990 and prepared on September 18, 1990, PERKINS and CHAVEZ interrogated Susana Zaldivar, former RASMARK employee, at approximately 7:00 P.M. at Denny's Restaurant located at Lomaland Gateway West in El Paso, Texas, (see **Exhibit 16**). Susana Zaldivar testified as Government witness and was thoroughly examined on both direct and cross, and no evidence was elicited from her connecting the Rasmussons or RASMARK to any criminal activities pertaining to the FLORES organization.

(145) Unknown to Mark and Deborah Rasmusson, on or about August 28, 1990 and prepared on September 13, 1990, PERKINS and CHAVEZ went to Apodaca, Jensen and Company, the CPA for the Rasmussons and RASMARK, located at 300 E. Wyoming, Suite A, El Paso, Texas, with Subpoena #M7-90-525 and conduct an in-depth interview of Albert J. Apodaca and Keven L. Jensen pertaining to Mark and Deborah Rasmusson and RASMARK, (see **Exhibit 17**). Albert Apodaca testified as a Government witness and was thoroughly examined on both direct and cross, and no evidence was elicited from him connecting the Rasmussons or RASMARK to any criminal activities pertaining to the FLORES organization. APODACA was thoroughly questioned about receipt of cash, financial reports, reconstruction of invoices and other issues pertaining to the Rasmussons and RASMARK.

(146) However, FROST, on behalf of himself, USCS, and other members of the FTF, included in his two affidavits of November 19, 1993 misinterpretatons, misleading statements and outright fabrications that he attributed to APODACA, and which were uncorroborated in the criminal trial transcript and uncorroborated by any independent evidence from the FTF.

(147) APODOCA disputes in his affidavit certain statements FROST used in the FTF affidavits of November 19, 1993:

(148) (1) That he is a Certified Public Accountant and his office is located at 2507 E. Yandell, El Paso, Texas 79903;

(149) (2) That he has reviewed photocopies of a DEA Form 6, dated September 13, 1990, and excerpts from FROST's affidavit for a search warrant;

(150) (3) In both reports the agents discuss a single $11,000 cash transaction, APODACA had told the agents the money was from several cash transactions. Mark Rasmusson asked APODACA if he should reconstruct the missing invoices related to the $11,000. Mr. Rasmusson did not ask him if he should match the invoices to the amounts the government agents knew about as indicated in the DEA Form 6 and affidavit, "and that is not what I told the agents", said APODACA.

(151) (4) APODACA also states that "I also did not tell the agents I was alarmed by Mark Rasmussons actions, what I did tell them was that I was alarmed by their contacting me. It was not because of anything Mark Rasmusson did. I also told the agents I always knew Mark Rasmusson to be very honest, and that I was not aware of him being involved in any illegal activity. That was not included in either report";

(152) (5) That Deborah Rasmusson gave APODACA a letter stating RASMARK did not accept cash. However, he was never told that by Mark Rasmusson;

(153) (6) That APODACA told the agents that he was familiar with RASMARK's major accounts. He also told them he was not familiar with the Jesus Flores/Vista Remodeling account. However, APODACA said the agents implied Flores/Vista Remodeling was a major account which was not true. Even if Flores/Vista Remodeling had spent $50,000, APODACA said, that would not make them a major account. Instead, Ford Motor and Chrysler were major accounts and their business with RASMARK was close to or in excess of a million dollars a year, said APODACA.

(154) (7) Also, APODACA said Deborah Rasmusson has never made any statements to him about taking cash under the table as

reflected in the DEA report, and that he also never told Arturo Vargas that Deborah Rasmusson admitted not paying taxes on $100,000 of income in 1990 or 1991, as reflected in FROST's affidavit;

(155) (8) That he did require that DEA to give him a subpoena prior to giving them any records; he believes this was done at the recommendation of his attorney, not Mark Rasmusson.

(156) (9) APODACA further states that the Internal Revenue Service did an audit of 1989-1990 income tax returns for RASMARK. This audit resulted in a "no change" or no additional tax due; and,

(157) (10) That he was never shown a copy of the DEA Form 6 regarding his alleged statements until just before Mark Rasmusson's trial in 1990. At that time "I told agent Perkins some of the statements attributed to me were not correct."

(158) FROST, on behalf of himself, USCS, and other members of the FTF alleged in his two affidavits of November 19, 1993 that the Rasmussons were living a lifestyle beyond their financial means. However, APODACA's affidavit states the fact that IRS conducted audits of the Rasmussons and RASMARK during 1989-1990; these audits resulted in "no change" in tax liability and certainly no charges of tax evasion.

(159) FROST, on behalf of himself, USCS, and other members of the FTF certainly could have utilized the appropriate legal process to obtain the tax records of the Rasmussons and Rasmark. They could have subpoenaed the RASMARK's financial records from APODACA; none of these steps were taken to find out the Rasmussons true financial condition, or if they were, the information was intentionally ignored. Even when FROST took the box of RASMARK records form Deborah Rasmusson on May 23,1992 and when through the pretext of getting a warrant to view the contents of the box, neither FROST nor MILLS, SCHROEDER, ACOSTA, HIVICK, HOLLAND, BAKER, KEITH WILCZEWSKI, REAY, LAPPE have an appropriate document analysis done on the financial documents to determine

whether there was any evidence of criminal activity pertaining to drug smuggling, money laundering, violations of the Bank Secrecy Act, mail fraud, kickback or payoff schemes, or tax evasion. None of the Defendants have produced evidence of any other source of the Rasmussons' lifestyle or RASMARK's income other than the legitimate charter services that RASMARK sells to the public.

(160) On or about August 29, 1990 and prepared on September 5, 1990, PERKINS and t CHAVEZ went to RASMARK at approximately 1:00 P.M. and interrogated the office manager and returned on the same date to RASMARK at approximately 2:00 P.M. and conducted another in-depth interrogation of Mark and Deborah Rasmusson, without advising them of their constitutional rights not to answer the agents' question; and, they received documents in response to the DEA Subpoena #M7-90-512.

(161) On or about August 29, 1990, DEA SA Jack GELLER, Defendant PERKINS, Defendant LENOX, Defendant MARTINEZ and IRS SA PAYAN debriefed Peter SEAVERNS pertaining to FLORES organization, in the agents report SEAVERNS allegedly made statements pertaining the use of RASMARK by FLORES or his associates and an implied warning to Mark Rasmusson about FLORES' criminal activities, (see **Exhibit 18**). However, P. SEAVERNS testified as a Government witness during the FLORES criminal trial and was thoroughly examined on both direct and cross and no evidence was ever elicited from P. SEAVERNS pertaining to the information in the above DEA-6 report. The issue on whether Mark B. Rasmusson had knowledge of FLORES criminal activities was fully litigated

(162) Unknown to Mark and Deborah Rasmusson, on or about September 19, 1990, PERKINS presented the Jesus FLORES investigation a second time before a Federal Grand Jury in El Paso, Texas in such a manner that the Grand Jury handed down an indictment against Mark B. Rasmusson in Count Nine of a superseding indictment, alleging that he aided and abetted, counseled, induced and procured the commission of the offense of FLORES using or causing to be used an airplane in interstate or foreign commerce, (see **Exhibit 19**) .

(163) Approximately fifty-eight (58) Government witnesses testified during the FLORES criminal in which Mark B. Rasmusson was indicted. Approximately one hundred and nineteen (119) exhibits were admitted into evidence. Defendants LENOX, PERKINS, and MARTINEZ testified extensively; none of these witnesses produced any evidence that ever connected Mark B. Rasmusson, Deborah L. Rasmusson, or RASMARK with any criminal activity pertaining to drug smuggling, money laundering, violations of the Bank Secrecy Act, mail fraud, kickback or payoff schemes, or tax evasion.

(164) On or about September 26, 1990 Defendants PERKINS and LENOX contacted Mark B. Rasmusson and his attorney, Richard Esper, in El Paso, Texas. Arrangements were made for RASMUSSON to surrender himself to the agents' custody on September 27, 1990, at approximately 9:00 A.M., at the Federal Court Building in El Paso, Texas, (see **Exhibit 20**).

(165) On September 27, 1990, RASMUSSON surrendered himself and was placed under arrest at the Federal Court building. On that same date, the agents took RASMUSSON before U.S. Magistrate Janet REUSCH for his initial appearance. Bail was set at $10,000.00 which was posted by Debra Rasmusson. The agents processed Mark RASMUSSON (photographs, fingerprints, and DEA-202 Personal History Report) and turned him over to the custody of the El Paso, Texas, U.S. Marshals Service, (see **Exhibit 21**).

(166) On or about October 18, 1990, MARTINEZ and IRS SA PAYAN went to RASMARK, showed their ID to Mark RASMUSSON, told him that they were investigating FLORES in cooperation with the DEA. They asked to see all transaction records with FLORES. They asked how FLORES arranged his charters; they asked about Mark Rasmusson's relationship with P. SEAVERNS and whether SEAVERNS introduced Mark to FLORES; they asked whether Mark was aware of P. SEAVERNS transactions with FLORES; they asked whether Mark or Deborah dispatched the charters for FLORES. M. RASMUSSON told the agents that he had been indicted in this case and that his lawyer told him not to discuss these matters with anyone;

however, the agents continued to ask questions. M. RASMUSSON felt compelled to answer their questions. The agents asked who the pilots were that flew FLORES; they asked if Mark, himself, had flown FLORES; they asked whether Mark had been to FLORES house on Citation; they asked for copies of all invoices pertaining to FLORES, which Mark had his secretary to make copies and gave them to the agents; they asked for flight logs and wanted to know who the pilots were; at this point, Mark, again, told them that he would not answer any more questions without his lawyer and that before he gives any more documents he wanted them to get a subpoena. At which time Defendant MARTINEZ told M. RASMUSSON that "don't worry, I'll get you before the Grand Jury where you can be punished for lying." At no time did either of the agents advise Mark B. Rasmusson of his constitutional rights. The agents then left RASMARK.

(167) PERKINS testified that he and CHAVEZ confirmed the fact that RASMARK was an actual entity with employees, pilots and airplanes; that RASMARK is listed in the telephone book and has an office at Cutter Aviation.

(168) PERKINS further testified that he was aware of the Court's authorized wire interceptions on a number of telephones and none of the numbers was subscribed to Mark Rasmusson or RASMARK; that they intercepted maybe thousands of conversations; that there was one (1) conversation of all those thousands between FLORES and M. RASMUSSON.

(169) P. SEAVERNS testified for the Government pertaining to Form 8300 violations and other details of his dealings with FLORES organization. At no time did the Government attorney ask SEAVERNS any questions pertaining to M. RASMUSSON. (FROST refers to this testimony in his two affidavits of November 19, 1993 as though the testimony was about Mark B. Rasmusson or RASMARK).

(170) PERKINS testified that M. RASMUSSON told him that to the best of his knowledge that FLORES was the only cash paying customer that they had or one of the few cash paying customer;

PERKINS also testified that there is no crime in receiving cash for payment of a charter; that so long as the cash is reported on RASMARK taxes, the Rasmussons can do whatever they want with that cash.

(171) PERKINS testified that at the time on August 23, 1990 when he went to talk to M. RASMUSSON to ask him whether FLORES owned a Cessna 206, PERKINS already knew that in February 1990 a Jesus ZARGOSA, acting for co-conspirator Arturo BERMUDEZ, had purchased the 206, and on May 26, 1990, ZARGOSA paid $10,000 in cash to Tapaco Aircraft Parts and Accessories for repairs on the 206 and that the documents PERKINS seized at the time DEA seized the 206 revealed all of this information to him.

(172) However, Tapaco Aircraft Parts and Accessories was not charged with aiding, abetting, counseling, inducing or procuring the commission of FLORES' criminal activities.

(173) JIM EDWARD YOUNG, a former RASMARK pilot, testified as a Government witness. YOUNG testified that RASMARK did a fairly significant number of charters; that sometimes there were good weeks and sometimes there were bad weeks, just like any other business; that RASMARK was a fairly successful business; that RASMARK was a successful and profitable business, both at the time he started and at the time he left RASMARK.

(174) YOUNG testified that he had been with RASMARK since 1989 and that FLORES was not chartering flights back in 1989 with RASMARK.

(175) YOUNG testified that the Rasmussons never told him to falsify any documents; that as a pilot he was always on the lookout for illegal activity; that he did keep his eyes and ears open; that if he saw anything that was some sort of illegal activity or that the plane was being used to conduct some sort of illegal activity, he would go tell M. RASMUSSON and that he would head straight to law enforcement authorities to tell them.

(176) YOUNG testified that with respect to charters that FLORES took, he never had to go tell Mr. Rasmusson about any type of illegal activities that he suspected going on; that at that time, the 44 Charlie Papa, Lear 24 was worth about $500,000 and the Lear 25 was worth about $700,000; that they are pre-owned, and depending on the condition of airplane, they could be worth more, any where from a half a million dollars to a million dollars; that to his knowledge, Mr. Rasmusson has never subjected his planes that are worth that value to be utilized to commit some crime or further some crime.

(177) YOUNG testified he did not plan a trip to Switzerland for Mr. BERMUDEZ; that he was never involved in that deal; that he was present during an interview with PERKINS on August 27th but he doesn't know about the flight; that he was not to be the pilot on that flight; that he had no idea who was going to be the pilot.

(178) Subsequent to the acquittal of M. RASMUSSON, the DEA did not close its case against M. RASMUSSON and neither did the USCS close their parallel investigations of the Rasmussons and RASMARK. Instead, the USCS supervisors Defendants LAPPE, REAY, and WILCZEWSKI formed the FTF for the purpose of providing another cover under which they could continue their pursuit of the RASMARK assets and the ruin of Mark and Deborah Rasmusson and later Andrew Gantkessy.

(179) Subsequent to the acquittal of M. RASMUSSON, the DEA in conjunction with the USCS and or the USCS Financial Task Force (FTF) continued to investigate Mark and Deborah Rasmusson, RASMARK, and later adding Andrew A. Gantkessy, when they knew they had no independent corroborating facts subsequent to the FLORES criminal trial to connect any of the Plaintiffs with criminal activity pertaining to drug smuggling or money laundering, violations of the Bank Secrecy Act, mail fraud, kickback or payoff schemes, or tax evasion.

(180) USCS SA John PETERSON, on behalf of himself and the USCS, as the original case agent, was investigating the Rasmussons

and RASMARK as early as 1987 and continued the USCS investigation against the Plaintiffs after Mark RASMUSSON's acquittal despite not obtaining any independent corroborating evidence of criminal activity pertaining to drug smuggling or money laundering, violations of the Bank Secrecy Act, mail fraud, kickback or payoff schemes, or tax evasion. USCS, just as the DEA had earlier with the FLORES investigation and criminal trial, was on a fishing expedition; one way or another they were determined to snare Mark and/or Deborah Rasmusson, RASMARK, and Andrew A. Gantkessy into at the appearance of criminal activity since it became clear none of the Plaintiffs was engaging in actual criminal activities.

(181) PETERSON, on behalf of himself and USCS, did not uncover any information, facts or evidence that any of the Plaintiffs were associated with drug trafficking organizations. There were no law enforcement undercover officers or criminal informants making deals with any of the Plaintiffs pertaining to drug smuggling, money laundering, violations of the Bank Secrecy Act, mail fraud, kick back for the purpose of identifying the alleged criminal associates of the Rasmussons; learning about deals in the making, the inside details of who, what, when, where and how is essential to establishing the existence of criminal activity corroborating any of the Plaintiffs engaging drug smuggling, money laundering deals, violations of the Bank Secrecy Act, mail fraud, kickback or payoff schemes, or tax evasion.

(182) Between the acquittal of Mark B. Rasmusson on or about June 14, 1991 and March of 1992, when FROST took over PETERSON's investigation of the Plaintiffs, no charges had been filed or indictments handed down against any of the Plaintiffs as a result of the USCS' investigation being conducted by PETERSON.

(183) On or about March of 1992, Defendants LAPPE, REAY, WILCZEWSKI, on behalf of the USCS, formed the Financial Task Force (FTF) under the responsibility of the Financial or Currency Group, which dealt with financial investigations that were purely Customs in orientation; those that were joint investigation with other

entities fell under the FTF. The FTF was also supervised by that currency or financial group supervisor. The FTF consisted of the USCS, FBI, IRS, combined with the HIDTA task force of the EPPD and EPSD.

(184) The members of the FTF were USCS: SA LAWRENCE E. FROST, March, 1992; SA LARRY K. BROWN, May, 1993; FRED J. SCHROEDER, January 1993 to February; WALTER J. KING, assigned to the Financial Investigations Group that provides manpower to the FTF--1992-1993; FBI SA JOE L. ACOSTA, March, 1992; IRS SA FONDA HIVICK, April, 1992 through February, 1993; EPSD Officers NEIL BAKER and JERRY KEITH; and EPPD Officers JAMES HOLLAND and unofficially, GEORGE SALAS. The acts and conduct of the individual members or unofficial members accrued to the benefits of the USCS and the FTF in attempting to reach their goal taking the assets of RASMARK. They each acted individually and in concert for the expressed purpose of ruining Mark B. Rasmusson, Deborah L. Rasmusson, RASMARK, and Andrew A. Gantkessy.

(186) The goal of the FTF was to accomplish what the DEA's Special Agents AGUIRRE, PERKINS, LENOX and E.CHAVEZ, and USCS SA PETERSON and SCHROEDER, prior to March of 1992, all failed to do--get all the assets of RASMARK, including its airplanes, for their respective agencies. Andrew A. Gantkessy, unfortunately, became a casualty because he refused to cooperate the FTF in wire tapping and fabricating lies against the Rasmussons and RASMARK.

(187) Defendants LAPPE, REAY, and WILCZEWSKI, and FROST approved the plan to initiate the FTF as a way to continue the USCS unlawful investigation of the Plaintiffs and obtain additional funding sources through getting the investigation approved as an OCDETF investigation or, if that fails, somehow tack it under the umbrella of a more substantial appearing criminal investigation that is either already approved as a OCDETF case, or under some big USCS' operation pertaining to either drug smuggling or money laundering.

(188) Defendants FROST, LAPPE, REAY, AND

WILCZEWSKI prepared a plan and presented it on behalf of either USCS, or the FTF, falsely presenting the Plaintiffs as engaging in money laundering or drug smuggling to the OCDETF Committee. The defendants knew from the beginning they had no nexus to criminal activity involving any of the Plaintiffs. They attempted to connect the Rasmussons and RASMARK as being criminally associated with Guillermo PORTILLO, a Mexican national that the USCS believed was engaged in a large-scale money laundering operation between Mexico and the U. S. However, that plan fell through because the entire business transaction between RASMARK and PORTILLO was legitimate from beginning to ending and completely documented in the Federal Aviation Administration (FAA) official systems of records.

(189) The only connection between Guillermo Portillo and the Rasmussons and RASMARK was a legitimate business transaction that occurred in or about October 1989, when RASMARK agreed to housed PORTILLO's aircraft, N7GP, provide pilots and maintenance all for a reasonable fee and the use of the aircraft when PORTILLO was not using it. These are common arrangements for air jet charter companies to make with private aircraft owners who do not have the facility to housed their aircraft.

(190) The entire business relationship between PORTILLO and RASMARK is fully documented in the FAA records from the beginning to ending: RASMARK obtained a mechanics lien against PORTILLO's aircraft on or about November 1, 1990 for unpaid RASMARK invoices. PORTILLO satisfied the lien by paying his outstanding RASMARK invoices on or about March 8, 1991, at which time RASMARK released its lien and removed PORTILLO's aircraft from its Air Taxi Certificate on file with the FAA, approximately a full year before the FTF was formed.

(191) The FAA records are easily accessible as public records to all of members of the FTF. Defendant FROST, as the case agent knew about it and should have briefed the remaining FTF members; even if FROST failed to inform the FTF members, the entire FTF knew or should have known because PORTILLO was the larger money

laundering organization that they attempted to connect the Rasmussons to as PORTILLO's associates.

(192) Certainly by the time FROST prepared his two affidavits of November 19, 1993 to obtain search warrants for the Rasmusson's residence on Leo Collins and RASMARK, then located at 6805 Boeing Drive, El Paso, Texas, every member of the FTF knew or should have known that they were violating their oath of office and the constitutional rights of the Plaintiffs; yet, they continued with the plan and executed the search warrants.

(193) Another indication that each member of the FTF knew of the bogus nature of their investigation against the Plaintiffs is that in November of 1993 they listed in the search warrant's return "Case = EP2CR90EP0013 - II PORTILLO"; numerous evidence tags placed on the boxes that were used to store RASMARK records has the same case number with PORTILLO on them. In some instances the FTF tried to redact PORTILLO's name, however, they missed some.

(194) Additionally, the "90" in the above case number indicates the PORTILLO's case was underway in at least 1990. Often cases are started several months before the official case number is assigned.

(195) The PORTILLO case did not materialize into the "biggest money laundering case ever" for USCS, in fact, it did not materialize into a money laundering case at all or result in any charges or indictment being brought against PORTILLO. As a result the case became a big embarrassment to the USCS and the investigation was decertified by the OCDETF Committee in or about 1992.

(196) Before the USCS formed the FTF to continue its investigation against the Plaintiffs, they knew they had no criminal activity in which to connect Mark and Deborah Rasmusson or RASMARK. Therefore, the FTF set in motion a plan to develop the criminal connection, or at least an appearance of criminal activity nexus that they needed.

(197) One part of the plan was to disrupt the business relationship between RASMARK and its biggest revenue generating customer, Ford Motor Company. In or about January of 1992, USCS agents, as part of their preliminary phase of initiating the FTF investigation against the Plaintiffs, contacted Ford Motor Company officials from the Body and Assembly Division, Dearborn, Michigan. The Ford officials, Bill DUNMEAD, Transportation Traffic Operations representative, El Paso, Dave BLAIR, Body and Assembly representative, and Dick Mcquaid, another body and Assembly representative, told Andrew A. GANTKESSY that RASMARK was in a lot of trouble with the federal government, and to stop using them for charter. They instructed GANTKESSY to start using Active Aero Charter on or about November of 1991 to January of 1992, Ford Motor Company conducted an audit of its Favesa plant and found out that by Ford using RASMARK for charters Ford saved money and instructed GANTKESSY to continue to use RASMARK.

(199) Another part of the plan consisted of El Paso Police Officer SALAS, on behalf of himself, EPPD, USCS, and the FTF, gaining the trust of Deborah Rasmusson, after the Rasmussons received a mysterious death threatening telephone call at their RASMARK office on or about January 14, 1992. SALAS was one of the officers who responded to the Rasmussons' call to the EPPD. SALAS has been an EPPD officer since 1977; he worked as a relief officer, whatever district he was assigned; and, he worked the district in which the airport area is contained during 1991 and 1992. However, SALAS was not assigned specifically to the airport area; the airport have their own detachment from the EPPD. Therefore, SALAS responding to the Rasmussons' call about the life threatening message on the RASMARK telephone answering system was not at random; he was specifically assigned despite the airport having its own detachment of police officers.

(200) SALAS listened to the death threat on the tape which stated, "the next time I see you mother f----r I'm going to kill you — I'm going to rip your f-----g hear out." Both Mark and Deborah RASMUSSON were extremely disturbed and frightened by this message on their office answering machine. SALAS asked a lot of

questions including whether Mark B. RASMUSSON was involved in any illegal activity where people would be after him to kill him. The RASMUSSONs responded with a "no". SALAS took the tape with him.

(201) After SALAS took the tape, the EPPD did not institute an investigation to determine whose voice was on the tape; even though the Rasmussons had given SALAS their suspicions about Joe SUDOMIR, a FORD employee that they had a rather bitter dispute with over approximately 1.6 million dollars in unpaid RASMARK invoices which resulted in SUDOMIR being relocated to a FORD plant in Michigan.

(202) Shortly after that event, Deborah L. RASMUSSON began to see people peeking in the window when she was alone at home and Mark B. RASMUSSON was out of town. After several of these unnerving incidents, Deborah L. RASMUSSON contacted SALAS to tell him what was happening. SALAS told Deborah L. RASMUSSON that his supervisor had reviewed the tape recording of the threatening telephone call and thought that she needed protection. SALAS, on behalf of himself, EPPD, USCS, and the FTF, then offered to make his services as a bodyguard available to Deborah L. RASMUSSON. SALAS told Deborah L. RASMUSSON his fee was $20.00 hour; SALAS then voluntarily gave Deborah L. RASMUSSON his work number, home number and pager number in case she needed to contact him. During that time Mark B. RASMUSSON was gone out of town on a lot on contract flights.

(203) Despite telling Deborah L. Rasmusson that his supervisor thought the threats were serious and needed protection, no follow up investigation was conducted by the EPPD.

(204) Several days after their first meeting at RASMARK, SALAS quickly made himself appear highly concerned about Deborah L. RASMUSSON's safety by casually stops made these visits quite frequently, often three or four times a week. On one occasion SALAS came by the RASMUSSONs home unannounced; her son Ian let him in; Deborah L. RASMUSSON was in the hot tub when he arrived; she got

out covered only with a towel and went to her bedroom to get dress. Much to her surprise, she found SALAS in his uniform in her bedroom; SALAS took advantage of Deborah L. RASMUSSON's trust and reliance on him for protection and proceeded to seduce her. Thereafter, SALAS continued to use his position and influence by taking Deborah L. RASMUSSON, by herself and on some occasions with her friend Blanca ALEVAR, to parties, riding in his police vehicle, his personal car, and Deborah L. Rasmusson's car on other occasions, to restaurants, and even to his own home when his family was not there.

(205) Shortly after the first seduction by SALAS, he appeared at the RASMARK offices and told Deborah L. RASMUSSON that he had been transferred to the airport and would be able to see a lot more of her. After that SALAS came by the RASMARK offices almost daily; it was during these contacts that SALAS started questioning Deborah L. RASMUSSON about the RASMARK business and her personal relationship with Mark B. RASMUSSON. Deborah L. Rasmusson shared her personal marital problems with SALAS. SALAS also implied to her that Mark B. RASMUSSON was involved in criminal activities was plotting to harm her.

(206) On one occasion SALAS was dropped off at the RASMUSSONs residence while still in EPPD's uniform and on duty. While there he received a call on his pager. SALAS told Deborah L. RASMUSSON that his supervisor did not know he was at her residence, and he would get in trouble if his supervisor found out. SALAS asked if he could borrow Deborah L. RASMUSSON's Mercedes and go to a convenience store and call his supervisor from there. Deborah L. RASMUSSON agreed and loaned him her car, gave to him her entire set of keys, which included house key and keys for their Grand Marquis car.

(207) It was after this occasion of SALAS borrowing her car that Deborah L. Rasmusson began to notice "unusual happenings" in the office and at home; offices were rifled and left in a disarray; the same at home--items of clothing not belong to either Mark or Deborah Rasmusson, or to any of the children, were appearing in Deborah L.

Rasmusson home. Generally, things that messed up Deborah L. Rasmusson's organization, which she prided herself in being well organized. The sudden lack of organization caused her to become suspicious of everyone, including her own husband, Mark B.Rasmusson.

(208) During their affair, SALAS attempted to convince Deborah L. RASMUSSON that Mark B. RASMUSSON was associated with some really bad people who were involved in drugs and money laundering. Deborah L. RASMUSSON told SALAS that Mark B. RASMUSSON was straight, that is not engaging in any criminal activity; however, SALAS insisted Deborah L. RASMUSSON should be afraid of her husband. Deborah L. Rasmusson did begin to wonder whether what SALAS said had any truth to it since he was a police officer and in a position to know about criminal matters and organizations. However, Deborah L. Rasmusson became more confused because she never saw Mark B. Rasmusson do anything that could be related to drug smuggling, money laundering, violations of the Bank Secrecy Act, mail fraud, kickback or payoff schemes, or tax evasion. She had always known her husband to be honest in his business dealings; moreover, she was the primarily handling all of the day-to-day business matters for RASMARK while Mark B. Rasmusson basically tended to keeping the aircraft in the air and supervising the pilots. Moreover, Mark B. Rasmusson was known for his lack of interest in managing the RASMARK business; he much preferred to fly and relax.

(209) SALAS, on behalf of himself, EPPD, USCS and the FTF, continued to use his influence to further plant the idea in Deborah L. RASMUSSON's mind that perhaps her husband, Mark B. RASMUSSON, may be out to get her, or perhaps some of his alleged criminal associates. The more time SALAS spent with her, the more Deborah L. RASMUSSON thought he was sincere and was genuinely concerned about her safety; Deborah L. RASMUSSON was highly frustrated and disappointed in the possibility that her husband might be behind the "peeking in the windows" or office files at RASMARK found in disarray, and her closets and drawers at home in a disarray. Therefore, she began to feel safer with SALAS than with her own

husband, Mark B. Rasmusson whenever he was in town.

(210) Unknown to Mark and Deborah Rasmusson, shortly after the RASMUSSONs hired SALAS, SALAS contacted his friend, a former EPPD officer now working for the FBI, for the alleged purpose of having the Rasmussons checked out. However, this contact resulted in SALAS being contacted by Defendant FROST, on behalf of himself, USCS and the FTF, in or about March of 1992.

(211) Unknown to Mark and Deborah Rasmusson, on the occasion that SALAS talked to FROST in March of 1992, SALAS explained to FROST that he was working as private security and bodyguard for the Rasmussons and that he had not observed the RASMUSSONs participating in any criminal activities; however, SALAS, on behalf of himself, EPPD, USCS and the FTF, agreed to keep FROST informed of the Rasmussons' activities, although he was not officially assigned to the FTF. Clearly, SALAS became an agent for the FTF regardless of whether or not he was assigned to the FTF. Also, the federal task utilizes other federal agents from the lead agency and other agencies without the particular agents being officially assigned to the task force. A case in point is SA Larry BROWN.

(212) SALAS made himself available to Deborah L. RASMUSSON twenty-four hours (24) per day, gave Deborah L. RASMUSSON his work, home and pager numbers for her convenience.

(213) Deborah L. RASMUSSON became paranoid and confused and didn't know what to believe anymore. As a result, Deborah L. RASMUSSON began slowly to abuse alcohol and other drugs.

(214) On or about May 23, 1992, a Saturday morning, Deborah L. RASMUSSON, along with her son Ian Maye from a previous marriage, went to the RASMARK offices, arriving between 10 A.M. and 12:00 noon; when they arrived she noticed a file cabinet opened, and some important RASMARK records in a box. Mark B. RASMUSSON and his son, Mark, Jr. from a previous marriage, had left

for Mexico the previous day. Deborah L. RASMUSSON became suspicious that someone might have broken into the RASMARK offices and could still be in there. She then telephoned SALAS. SALAS arrived in uniform approximately thirty minutes after Deborah L. RASMUSSON called. SALAS told Deborah L. RASMUSSON to get her gun; he also drew his gun and proceeded to check the RASMARK offices.

(215) After SALAS completed his search of the offices, Deborah L. RASMUSSON told him she wanted to file a police report. She also showed him the box of records. SALAS then told her he knew who she needed to talk to. SALAS told Deborah L. RASMUSSON to take the records with her and she and her son got into SALAS' car. SALAS had her son IAN to hunch down in the back seat and for her to hunch down in the front seat. SALAS took them to the Sunwest Bank where he parked and told Deborah L. RASMUSSON to take her pistol out of her purse. SALAS led her to believe that she and her son were in great danger. SALAS left them in the car and went to a Circle K to make a telephone call. Within minutes four or five cars pulled up, and positioned themselves on each side, and on the front and back of SALAS' vehicle.

(216) Unknown to Deborah L. RASMUSSON, SALAS had turned her over to Customs and the FTF, giving the AGENTS their once chance to either convince or coerce Deborah L. Rasmusson in helping their plot to snare Mark B. Rasmusson, or to sign a consent form for search and seizure of both her residence on Leo Collins and the RASMARK offices on 6805 Boeing Drive, with possible forfeiture of all the Rasmussons and RASMARK's assets.

(217) Defendants FROST and MILLS were among the FTF members that escorted SALAS' vehicle to the USCS offices. They took her and Ian to the United States Customs Office at 9400 Viscount. When they got there, SALAS asked Deborah L. RASMUSSON for her gun. When Deborah L. RASMUSSON got out of SALAS' car, there were approximately ten to twelve agents with their guns drawn.

(218) The agents escorted Deborah L. RASMUSSON and her son Ian upstairs to the second floor and SALAS carried the box of records. Upstairs, SALAS placed the box of records on a table and introduced Deborah L. RASMUSSON to LARRY FROST. The other agents came in and introduced themselves to Deborah, also.

(219) Deborah L. RASMUSSON was in a state of shock by this time. Overwhelmed by the situation of being at USCS' office surrounded by so many federal agents appearing to be concerned about her and her son's safety. FROST told Deborah L. RASMUSSON that Mark B. RASMUSSON was plotting to kill her. FROST then told Ian to meet his "new best friend", pointing to Defendant MILLS, who took Ian out of the office. FROST then offered Deborah L. RASMUSSON a beer and had a six pack brought to her which she finished drinking the entire six pack, making her intoxicated. FROST told Deborah L. Rasmusson that he was aware of Deborah L. RASMUSSON having complained to the EPPD about people peeking into her windows at her home.

(220) FROST told Deborah L. RASMUSSON that SALAS was working for him in an undercover capacity and was a plant to protect her from Mark B. RASMUSSON. Deborah L. RASMUSSON became very upset at SALAS and FROST had him to leave the room. Deborah L. RASMUSSON then asked FROST if the mirrors in the room were one-way and if so who were observing. FROST told Deborah L. RASMUSSON that the agents behind the mirror were there to protect her from Mark B. RASMUSSON. FROST told Deborah L. RASMUSSON that he knew what Mark B. RASMUSSON was involved in, but needed for her to fill in the details. FROST also told Deborah L. RASMUSSON that she was going to lose everything, her house and the company RASMARK. FROST stated further that they weren't after her and husband, but after the bigger fish like Sib Abraham, Richard Esper, and Judge Pena. Deborah L. RASMUSSON astounded adamantly told FROST that Mark B. RASMUSSON was not involved in any illegal activity.

(221) FROST next brought in some papers which assigned the

assets of RASMARK to the Government, and a consent form to search RASMARK offices. FROST told Deborah L. RASMUSSON that he was giving her one last chance and that they would place her in the witness protection program. Deborah L. RASMUSSON told FROST that she would not sign the papers, and demanded to see her son. She also told him that she wanted to leave. FROST's, and the other agents, attitude changed dramatically toward Deborah L. Rasmusson and her son. They became verbally and physically abusive, pushing her feet off a coffee table.

(222) Deborah L. Rasmusson then asked FROST if he had recorded her and he said no. Deborah L. RASMUSSON realized that she had been set up by SALAS and the Government to attempt to implicate Mark B. RASMUSSON in some kind of criminal activity even though there was no criminal activity.

(223) Deborah L. RASMUSSON demanded to leave with her son Ian and the box of business records. Before leaving FROST told the other agents as they were leaving that "this never happened." Deborah L. RASMUSSON wanted proof that she had been there so she pulled the fire alarm as she was leaving. FROST did not let Deborah L. RASMUSSON leave the building until the fire alarm had been resolved. Deborah L. Rasmusson.

(224) After Deborah L. RASMUSSON and her son left the Customs Office, they walked down the street on Viscount to the Diamond Shamrock convenience store, located just about a good two blocks from the USCS offices. FROST, MILLS, SCHROEDER, REAY and WILCZEWSKI, and several other agents, followed Deborah L. Rasmusson and her son to the Diamond Shamrock, and when she saw them she asked the store clerk to lock the door an call the police. The clerk called the police. FROST demanded the clerk open the store and showed him his badge. The clerk complied and when FROST came into the building Ian made an effort to protect his mother when FROST demanded the box of records. Ian had originally hidden the box of records near a rock wall, but brought them back into the store when the agents arrived. FROST, on behalf of himself, USCS and the FTF, with

MILLS' participation, forcibly took the box of records from D. RASMUSSON hands without her consent. FROST also grabbed Ian's by the neck, threw him down on the ground and handcuffed him. The agents then placed Ian in the back seat of one of their cars.

(225) D. RASMUSSON used the telephone at Diamond Shamrock to call David Chavez, one of RASMARK's dispatchers. When David Chavez arrived FROST released Ian and Deborah L. Rasmusson, and David Chavez drove Deborah L. RASMUSSON and Ian back to RASMARK, where she got her car and went home.

(226) However, before she left RASMARK, she was highly confused and angry; she didn't know what to believe anymore, whether the things FROST, and the other agents, had said about Mark B. RASMUSSON plotting to kill her was true; she became so angry that took some object and smashed Mark B. RASMUSSON's Porsche that was parked in the hangar. Deborah L. Rasmusson felt ashamed and used by SALAS.

(227) Upon Mark B. Rasmusson's return to El Paso, Deborah L. Rasmusson informed him of the May 23, 1992 incident; Mark B. Rasmusson was highly distressed over the allegations made by FROST, USCS, and other members of the FTF.

(228) Unknown to D. RASMUSSON, Defendants FROST, REAY, WILCZEWSKI, MILLS, and SCHROEDER, on behalf of themselves, USCS and the FTF, with notice of possible forfeiture of all assets. They had SCHROEDER and another agent to go to the RASMARK office to be in position to seize the office when given the okay.

(229) Defendant WILCZEWSKI, as the supervisor and on behalf of himself, USCS and the FTF, called out two additional Special Agents, one of whom was SCHROEDER, to observe and report the activities at the RASMARK business premises in case FROST obtained a consent to search or to prevent possible evidence from being removed or destroyed.

(230) However, the USCS and the FTF's plan fell through when Deborah L. RASMUSSON refused to sign the consent to search form and with possible forfeiture assignment of RASMARK assets.

(231) On this occasion of May 23, 1992, the USCS agents and the FTF questioned D. RASMUSSON extensively. FROST was the primary questioner; however, REAY and WILCZEWSKI supervised, and other wandered in and out, and at varying points participated in FROST's activities.

(232) Defendant MILLS, on behalf of himself, USCS and the FTF, was assigned to hold D. RASMUSSON's son Ian Maye in another office, separated from his mother. MILLS proceeded to question Ian about his relationship with Mark B. RASMUSSON and began suggesting to Ian that Mark B. RASMUSSON wanted to physically harm his mother and him. This untrue revelation caused Ian to become highly upset and confused, as he did not want to believe the bad things MILLS kept telling him about his stepfather.

(233) The entire incident from the time D. RASMUSSON arrived at the Customs Service office to when she was picked up by DAVID CHAVEZ lasted over six hours. During this time Deborah L. RASMUSSON and her son Ian were held against their will. FROST, on behalf of himself, USCS and the FTF, told Deborah L. RASMUSSON that she would be sorry for not cooperating, and that she would lose everything.

(234) After taking the box, known as "2 of 18", from Deborah L. RASMUSSON on May 23, 1992, FROST went through the process of getting a warrant in order to look at the business documents. FROST, on behalf of himself, USCS and the FTF, prepared an affidavit dated May 26, 1992 and knowingly and intentionally made the following false statements:

(1) That the United States Customs Service, Federal Bureau of Investigation and Internal Revenue Service Criminal Investigation Division had obtained evidence that Mark and Deborah Rasmusson

were utilizing their company, RASMARK, as part of a money laundering operation;

(2) That during March of 1992, Deborah Rasmusson told Defendant SALAS that her husband, Mark Rasmusson, was attempting to kill her;

(3) That during April and May of 1992 Deborah Rasmusson told SALAS that she continued to fear for her life and that she felt that the reason that she was in danger was her husband's criminal activity;

(4) That on May 23, 1992 Deborah Rasmusson told SALAS that she had decided she wished to meet with federal agents to provide information relating to the criminal activities of Mark Rasmusson and his associates;

(5) That on May 23, 1992 Deborah Rasmusson stated that she had brought evidentiary records with her to turn over to the FTF agents.

(6) That Deborah Rasmusson stated to FROST that Mark Rasmusson ships approximately one thousand pounds (1,000 pounds) of United States currency out of the United States twice a week on behalf of his criminal associates.

(7) That Deborah Rasmusson stated that this alleged currency is transported by aircraft belonging to RASMARK;

(8) That Deborah Rasmusson stated that this alleged currency is not reported to the U. S. Customs Service as required by law;

(9) That Deborah Rasmusson's son, Ian Maye, stated that he had been telling his mother to get away from Mark Rasmusson for at least five years because Mark Rasmusson is a criminal;

(10) That Deborah Rasmusson became uncooperative when she learned that all assets of RASMARK may be subject to seizure and forfeiture by the U.S. Government;

(11) That Deborah Rasmusson's son, Ian Maye, stated to USCS agents SCHROEDER and MILLS that every thing that the agents needed to convict Mark Rasmusson was in the box that his mother was carrying;

(12) The implication that Deborah Rasmusson and Ian hid the box because it contained evidence of Mark Rasmusson's criminal activities;

(13) That Deborah Rasmusson called FROST at approximately 3:45 a.m. on May 24, 1992 by telephone to apologize for being uncooperative and told FROST that the box contained all the evidence that would be needed to convict Mark Rasmusson of many crimes; and,

(14) That Deborah Rasmusson further stated that she had been uncooperative because the contents of the box can also be used as evidence against her.

(235) Defendant ACOSTA was with FROST when FROST prepared the May 26, 1992 affidavit and on behalf himself, FBI and the FTF, ACOSTA gave his support to the project of preparing the affidavit.

(236) Defendant HIVICK also was in the Customs office at the time FROST prepared the May 26, 1992, and on behalf of herself, IRS, and the FTF, she gave her input and support to the project of preparing the affidavit.

(237) FROST, on behalf himself, USCS and the FTF, presented the May 26, 1992 affidavit to the Magistrate REUSCH, who made a decision to grant the search warrant; however, unknown to the Court, based on false information provided in the affidavit, the Court did not make a detached and neutral decision. FROST and MILLS, on the behalf of themselves, USCS, FBI and other members of the FTF, literally took box from Deborah L. Rasmusson without probable cause, or personal knowledge of what was in the box.

(238) On May 27, 1992 FROST, on behalf of himself, USCS and the FTF, with the agreement and participation of ACOSTA and HIVICK, opened the box of records which had been stolen from Deborah L. RASMUSSON.

(239) There were no documents in that box with the indicia of criminal activity pertaining to drug smuggling, money laundering, violations of the Bank Secrecy Act, kickback or payoff schemes, or tax evasion. The box simply contained a mixture of normal business records of RASMARK, with perhaps a few personal documents.

(241) Neither FROST, ACOSTA or HIVICK saw any records or documents that were evidence of drug smuggling, money laundering, violations of the Bank Secrecy Act, Mail Fraud, or tax evasion.

(242) Defendant HIVICK has been a special agent for IRS for at least 13 years; she has received training in document analysis pertaining to drug smuggling, money laundering, violations of the Bank Secrecy Act, Mail Fraud, and tax evasion, she is a certified CPA and her role on the FTF was to identify and evaluate the prosecution potential of individuals suspected of violations of federal law over which the Internal Revenue Service has investigative authority and the planning and conducting of those investigations utilizing various investigative techniques such as interviewing, surveillance and execution of search warrants. Therefore, HIVICK with the necessary expertise to recognize documents that contain evidence of criminal activities as named above saw no such evidence.

(243) HIVICK saw nothing in the box that, in her professional opinion, merit any further analysis by her or any recommendation to IRS criminal division to take further action; nor did she recommend to the FTF to pursue those documents as the basis of any type of criminal prosecution. HIVICK did nothing further with the records or documents from that box. However, HIVICK did not go to the supervisors of the FTF, LAPPE, REAY and WILCZEWSKI, and complain about the FTF continuing a bogus and sham investigation. Instead, HIVICK continued

to participate, even assisting in the execution of the sham affidavit of November 19, 1993 for the RASMARK office coordinate and organize the financial information, relating to possible bank fraud violations, into a prosecutive package. Also, he was to provide technical assistance to the FTF.

(244) Upon reviewing the contents of the box seized on May 23, 1992, ACOSTA only saw normal business records; therefore, he was not able to pursue any type of criminal charges under his area of responsibility on behalf of the FTF or the FBI.

(245) ACOSTA saw nothing in the box that, in his professional opinion, merit any further analysis by him or any recommendation to FBI criminal division to take further action; nor did he recommend to the FTF to pursue those documents as the basis of any type of criminal prosecution. ACOSTA did nothing further with the records or documents from that box. However, ACOSTA did not go to the supervisors of the FBI, FTF, LAPPE, REAY and WILCZEWSKI, and complain about the FTF continuing a bogus and sham investigation. Instead, ACOSTA continued to participate, even assisting in the execution of the sham affidavit of November 19, 1993 for the Rasmusson's residence at 11157 Leo Collins, El Paso, Texas.

(246) Subsequent to May 23, 1992, Defendant WILCZEWSKI, on behalf of himself, USCS and the FTF, approved and or ratified all of the acts of FROST, USCS, and other members of the FTF who participated in the box incident.

(247) Defendant REAY, on behalf of himself, USCS and the FTF, approved and or ratified all of the acts of FROST, USCS, and other members of the FTF who participated in the box incident.

(248) Defendant LAPPE, on behalf of himself, USCS and the FTF, approved and or ratified all of the acts of FROST, USCS, and other members of the FTF who participated in the box incident.

(249) When USCS and the FTF were unsuccessful in getting

Deborah L. RASMUSSON to participate in their plan to destroy M. RASMUSSON and to seize of the assets of RASMARK, they took t RASMUSSON's ex-wife, Lori NELSON, the mother of Mark, Jr., the minor child of M. RASMUSSON, who was approximately eight years old in 1992. FROST told NELSON that Mark B. Rasmusson was engaging in criminal activities, among other inflammatory matters.

(250) In or about early June of 1992, after FROST told NELSON this highly inflammatory and false information about Mark and Deborah RASMUSSON, she was so alarmed that she called her attorney, William COLE, and requested that he call FROST and that he also file a motion for modification of the custody and visitation agreement.

(251) COLE filed an affidavit with his Motion to Modify Visitation in which he detailed the inflammatory allegations made by FROST:

(1) That on June 17, 1992, he spoke with Mr. Frost.

(2) That FROST advised him that there was an ongoing investigation of the Rasmussons by the federal authorities concerning alleged criminal activities relating to criminal charges which had previously been dismissed. FROST stated that the charges had been dismissed during trial because a witness failed to appear and testify.

(3) FROST further told COLE that within the previous 30 days, Debra Rasmusson had come to his office high on controlled substances; and had been using them for many years.

(4) FROST also told COLE that Deborah Rasmusson was carrying a weapon because she thought her husband, Mark Rasmusson, and his friends were trying to kill her because she was a security risk.

(5) FROST told COLE that Debra Rasmusson told him that she always carried a gun because she feared for her life. In fact, it was the local police department, according to FROST, that had referred her to

FROST after she told the police that she was fearful for her life.

(5) Mr. Frost told COLE that Debra Rasmusson had certain books and records in her possession belonging to Mark Rasmusson, which were later confiscated by FROST, the implication being that they pertained to criminal activity.

(6) FROST expressed extreme concern about the safety of Mark Rasmusson, Jr. during visitation in the present atmosphere.

(7) FROST volunteered to come to Douglas County to testify regarding these matters if he was served with a local subpoena.

(252) FROST, On the behalf of himself, USCS and the FTF made the following false disclosures to COLE and NELSON:

(1) The implication that M. RASMUSSON was engaging in criminal activities relating to criminal charges which had previously been dismissed, referring to the bogus DEA case against M. RASMUSSON as aiding and abetting Jesus Flores' organization;

(2) That the charges had been dismissed during trial because a witness failed to appear and testify;

(3) That within the previous 30 days, D. RASMUSSON had come to FROST's office high on controlled substances and had admitted that she was addicted to controlled substances and had been for years;

(4) That D. RASMUSSON was carrying a weapon because she thought her husband, M. RASMUSSON, and his friends were trying to kill her because she was a security risk;

(5) That D. RASMUSSON told FROST that she always carried a gun because she feared for her life;

(6) That D. RASMUSSON told the local police that she was

fearful for her life;

(7) That D. RASMUSSON had certain books and records in her possession belonging to M. RASMUSSON, which were later confiscated by FROST, giving the implication they pertained to criminal activity; and,

(8) The implication that NELSON should have extreme concern about the safety of her son, Mark Rasmusson, Jr. during visitation in the present atmosphere.

(252a) All disclosures made by FROST Attorney COLE, on behalf of himself, USCS, and other members of the FTF, were illegal.

(253) The USCS and the FTF implemented a number of different investigative techniques, such as surveillance of Mark and Deborah RASMUSSON, RASMARK's offices, employees, aircraft and vehicles by placing "lookouts" in USCS computer system at various border locations for the purpose of having the aircraft and other vehicles searched, causing harassment, embarrassment, intimidation, and retaliation against the pilots and Mark and Deborah Rasmusson. Other "lookouts" were placed on RASMARK domestic flights for the RASMARK aircraft to be searched unlawfully, causing harassment, embarrassment, intimidation, and retaliation against the pilots and Mark and Deborah Rasmusson.

(254) USCS and the FTF implemented surveillance of the RASMARK offices, employees, Mark B. RASMUSSON, Deborah L. RASMUSSON, and Andrew A. Gantkessy. Defendants MILLS, SCHROEDER, BROWN, HIVICK, KING, HOLLAND, BAKER and KEITH all, on behalf of themselves, USCS, FBI, IRS, and the FTF, participated in various surveillance activities against the Plaintiffs. As a result, RASMARK aircraft were stop on numerous occasions when the aircraft was flying strictly domestic flights and searched; Mark and Deborah Rasmusson were followed and stakeouts were set up to watch them leave their residences; their residences and offices were entered unlawfully; and other activities to give the general appearance that a

legitimate investigation was being conducted.

(255) On or about September 16, 1992, Defendant MILLS, on behalf of himself, USCS and the FTF, with assistance from CPO Lue Jackson, SA Don Levick, SA Larry Harrell, SA Dante Orate, SA C.W. Moore, SA Cynthia Mandujan, and SA Daniel Ramirez, individually and in concert, alleged certain observations pertaining to surveillance activities of the RASMARK offices, employees Report of Investigation (ROI) that is attached to this complaint as **Exhibit 22**.

(256) Neither MILLS nor any other member of the FTF engaging in the surveillance at 0600hrs through 0930hrs made any observations involving criminal activities pertaining to drug smuggling, money laundering, violations of the Bank Secrecy Act, mail fraud, kickback or payoff schemes, or tax evasion.

(257) The alleged FTF observation of two Hispanic males (HMA's) at 1215hrs attempts to implicate M. RASMUSSON, D. RASMUSSON and RASMARK in narcotics smuggling. However, the USCS ROI fails to show the fact that RASMARK is located in Julie's Aircraft Service, Inc. building at 6805 Boeing Drive. Inside Julie's any member of the public could walk in and go to the aircraft parts and supplies section, aircraft repairs section, aircraft engines section, and other section, all without ever entering the RASMARK's offices.

(258) Neither MILLS, USCS, or any other member of the FTF observed where the two HMA's went once they walked through the door nor did any of the agents or officers follow up by going inside the Julie's building to determine where the two men went.

(259) Neither MILLS nor any other member of the FTF for the surveillance at 1300hrs through 1330hrs made any observations involving criminal activities pertaining to drug smuggling, money laundering, violations of the Bank Secrecy Act, mail fraud, kickback or payoff schemes, or tax evasion.

(260) Neither MILLS nor any other member of the FTF or

USCS who allegedly observed at 1545hrs Hector BARRERA, a known criminal, departing the RASMARK offices obtained any independent corroborating evidence that Hector BARRERA ever went to the RASMARK offices. Neither did any of the agents obtained any independent corroborating evidence that the male driving the red Mercedes was indeed Hector BARRERA.

(261) Neither MILLS nor any other member violations of the Bank Secrecy Act, mail fraud, kickback or payoff schemes, or tax evasion.

(262) Neither MILLS nor any other member of the FTF have shown that the surveillance observations beginning at 1605hrs through 1915hrs were involving criminal activities pertaining to drug smuggling, money laundering, violations of the Bank Secrecy Act, mail fraud, kickback or payoff schemes, or tax evasion.

(263) Another occasion of "lookout" placed on Mark and Deborah Rasmusson occurred on or about November 10, 1992, when Deborah L. Rasmusson accompanied by Blanca Avelar, left the RASMARK office at about 1:30 P.M.; Deborah L. Rasmusson cashed her pay check in the amount of about $2,000.00, and drove her Mercedes to Juarez, Mexico to collect payment on a customer account. Upon their return, they were harassed, intimidated, embarrassed and retaliated against at the border U. S. Customs and Immigration Inspection Station; they were ordered to the secondary inspection area prior to the agent asking for citizenship or if they had anything to declare. Approximately eight unknown agents joined in the conspiracy of harassment, intimidation, and retaliation. They used a narcotics detector dog on this occasion. This type of harassment, intimidation and retaliation was not unusual because every time that Deborah L. Rasmusson drove to Juarez, her car was always searched excessively upon her return to El Paso.

(264) Continuing their overt acts of harassment, intimidation, and retaliation, immediately the inspectors were abusive, used abusive language, such as "Get out of the car you f-----g bitches", "Shut-up! You

dog face slut". One agent alleged that he found a switch blade knife in the car and shouted "it is our car now!" Deborah L. Rasmusson was handcuffed behind her back and placed in a cell. Two female agents came in and strip searched her. The agent unlaced her top garment and searched her breast area then proceeded to search her crotch area. When the search was completed, the agents left her top unlaced where her undergarments could be seen and one of her breasts partially exposed.

(265) FROST and SA Mills, on behalf of themselves, USCS and the FTF, appeared and came into the cell where Deborah L. Rasmusson was confined. FROST stated "Hey Debbie, you got yourself into a little trouble here". By this time several other agents had gathered at the cell entrance. FROST, SCHROEDER, MILLS and other customs agents attempted without success to get Deborah L. Rasmusson to sign papers that would assign or forfeited her car to the U. S. Customs Service.

(266) An El Paso Police Officer who was later identified as the partner of SALAS, or worked with him occasionally, entered the cell and took Deborah L. Rasmusson out of the cell and placed her in a EPPD police car and transported her to the East Valley Police Substation. Deborah L. Rasmusson remained handcuffed. At the substation, she was searched three or four additional times by both men and women officers and in front of other male officers in a large room. Her top was still open and all the men in the room were leering at her and making snide remarks. Deborah L. Rasmusson felt dehumanized.

(267) Deborah L. Rasmusson was transported to El Paso County Detention Center where she was booked and charged with possession of a prohibited weapon. Unknown to Deborah L. Rasmusson, FROST, MILLS, USCS, and the FTF, had fabricated the finding of .1 grams of marijuana in her car and used that as the basis of seizing her Mercedes, alleging she was transporting an unlawful controlled substance.

(268) On or about December 9, 1992, the El Paso County

Attorney declined to prosecute Deborah L. Rasmusson on the prohibited weapon charge.

(269) At about 8:00 A.M. Deborah L. Rasmusson was released on bond. She tried to recover her car and was told that Customs was keeping the car alleging that it was forfeited. FROST also seized the RASMARK corporate record book and other records that still have not been returned to RASMARK.

(270) In order to have a hearing in court on the forfeiture of her car, Deborah L. Rasmusson was required to post a cash bond in the amount of $3,740.00 which has not been refunded. Deborah L. Rasmusson paid $2,500.00 to hire an attorney in order to get the seizure case into federal court. Deborah L. Rasmusson's car was returned without the legal proceedings taking place.

(271) On or about January 27, 1993 ACOSTA, on behalf of himself, FBI, and the FTF had FBI SA Patrick M. BRESNAHAN, in the Detroit, Michigan FBI's office, to issue an administrative subpoena to the Office of the Secretary, Ford Motor Company World Headquarters, the most important and highest revenue generating customer of RASMARK. The subpoena requested "Any and all shipping records pertaining to shipments of Ford Motor Company goods by Rasmark Jet Charter, Incorporated of El Paso, Texas for the years 1990, 1991 and 1992."

(272) The subpoena also contained the notice in bold and all caps, **PURSUANT TO AN OFFICIAL CRIMINAL INVESTIGATION OF A SUSPECTED FELONY BEING CONDUCTED BY THE FBI, IT IS REQUESTED THAT YOUR COMPANY FURNISH THE REQUESTED INFORMATION. YOU ARE NOT TO DISCLOSE THE EXISTENCE OF THIS REQUEST. ANY SUCH DISCLOSURE COULD OBSTRUCT AND IMPEDE THE INVESTIGATION BEING CONDUCTED AND THEREBY INTERFERE WITH THE ENFORCEMENT OF THE LAW."**

(273) ACOSTA, on behalf of himself, FBI, and the FTF, subpoenaed Ford's records to see what type of business, the volume of business that RASMARK was doing with Ford; and to see what type of money was being generated through Ford.

(274) ACOSTA received the FORD documents in response to the subpoena on or about February or March of 1993.

(275) ACOSTA, on behalf of himself, FBI, USCS, and the FTF, did a brief review of the documents; although ACOSTA wanted to know how much money were actually legitimately being generated by RASMARK from Ford's business, neither ACOSTA, FBI, USCS, or any other member of the FTF, had the appropriate document analysis done in order to obtain the relevant information and corroboration.

(276) ACOSTA forwarded a copy of the documents from Ford Motor Company to USCS for use by the FTF; however, neither FROST, USCS, FBI, or any other member of the FTF, had any analysis done of mail fraud, kickback or payoff schemes, or tax evasion.

(277) Continuing their conspiracy of vengeance, on or about February 12, 1993 Defendants SCHROEDER, HOLLAND, with Customs Auditor Hector BARRERA, interviewed Arturo VARGAS, a former employee of RASMARK, at the Office of Enforcement, El Paso, Texas, and attributed the following false statements to VARGAS:

(1) That VARGAS found RASMARK making outdouble invoices, with the amount on the invoice or the description of the item slightly altered. According to SCHROEDER, VARGAS said that in some cases the number of the invoice was the same, however the amount or the item was changed;

(2) That VARGAS said the RASMUSSONs took in a lot of cash, however, he never saw over $10,000.00 at one time

(3) That on several occasions VARGAS was told by Mark or Deborah RASMUSSON to make out a cash receipt, however he never

saw the cash that corresponded with the receipt;

(4) That the RASMUSSONs kept records on the computer that were not accessible to other RASMARK personnel;

(5) That Albert Apodaca, of the accounting firm Apodaca and Jensen, and RASMARK's accountant, told VARGAS that Deborah L. RASMUSSON admitted not paying taxes on $100,000.00 of income in 1990 or 1991.

(278) The remaining reported statements represent normal business operation and do not indicate any evidence pertaining to drug smuggling, money laundering, violations of the Bank Secrecy Act, mail fraud, kickback or payoff schemes, or tax evasion.

(279) VARGAS in his affidavit disputes the above allegations:

(1) That he reviewed excerpts from a USCS report contained in an affidavit for a search warrant by United States Customs Service Agent Larry Frost;

(2) That he never told the agents RASMARK was double invoicing and altering the dollar amounts and cargo on invoices; instead, what he did tell the agents was that in some instances, if a customer or RASMARK lost an invoice, a new invoice would be prepared to replace it. Thus, a second invoice is generated for exactly the same amount. The dollar amount and cargo would not be altered.

(3) That his duties and responsibilities did not include handling cash receipts. Instead what he discussed with the agents was the petty cash fund. He was in charge of the petty cash fund, which was used for miscellaneous office expenses and for the pilots, a normal business procedure. That is what the referenced "cash receipts" related to, not the daily business receipts, according to VARGAS.

(4) The agents also made reference to Mark Rasmusson keeping computer records which were not accessible to the other office

computers/network. VARGAS states the truth is he had no idea what Mr. Rasmusson kept on his computer, and had no reason to ask.

(5) VARGAS has no recollection concerning the agents statement that Albert Apodoca told him Deborah Rasmusson admitted not paying taxes on $100,000 of income in 1990 or 1991. Instead what he did discuss with the agents was a potential discrepancy with the RASMARK accounts receivable. The discrepancy was the result of preparing a replacement or second invoice for a lost or missing invoice. If the original receivable was not deleted from the computer it would cause a discrepancy/increase in the accounts receivable. However, this would not affect income because RASMARK was a cash basis corporation.

(6) It is true that D. RASMUSSON accused VARGAS of being an FBI agent. It is also true that D. RASMUSSON would not give VARGAS access to corporate and personal bank records because she was suspicious of him.

(7)While employed at RASMARK VARGAS never observed or had any reason to believe there was any illegal activity being conducted. He was dismissed from RASMARK by D. RASMUSSON over $20.00 missing from the petty cash fund.

(8) When VARGAS was interviewed he told the agents he had been dismissed.

(9) VARGAS was never shown a copy of the United States Customs service report to verify or correct the statements attributed to him and later used by agent Frost in his affidavit for a search warrant.

(280) On or about March 1, 1993, Defendant HOLLAND, on behalf of himself, EPPD, USCS, and the FTF, obtained a statement from EPPD Officer Clifford GONGAWARE who reportedly conducted surveillance activities of RASMARK in 1992 giving the appearance of suspicious activities taking place at RASMARK, (see **Exhibit 23**).

(281) On or about March 1, 1993, Defendant HOLLAND, on behalf of himself, EPPD, USCS, and the FTF, obtained a statement from EPPD Officer Andrew DeAngelo who reportedly conducted surveillance activities of RASMARK in 1992 giving the appearance of suspicious activities taking place at RASMARK, (see **Exhibit 24**)

(282) Because Mark and Deborah RASMUSSON, RASMARK, or Andrew A. GANTKESSY were not engaging in any type of criminal activity pertaining to drug smuggling, money laundering, violations of the Bank Secrecy Act, mail fraud, kickback or payoff schemes, or tax evasion, the federal agents and the FTF were desperate to find some type of nexus between the Plaintiffs and criminal activity that they resorted to having Officer Gongaware and Officer DeAngelo write their reports for alleged occurrences in 1992, where at the time of the alleged occurrences, no EPPD's follow-up was done or any type of independent corroborating evidence was obtained by any of the federal agents or the FTF.

(283) RASMARK load and unload freight at all hours of the night, after all it does advertise to the public as a 24 hour all weather charter service; additionally, passenger and air ambulance's services are 24 hour. RASMARK advertises itself as "Hot Freight Specialists" (meaning freight that must get from point A to point B in the shortest amount of time), "30 Minute Response Time Loading/Off Loading" and "Pickup/Delivery Service". These services account largely for RASMARK's success because RASMARK's employees are out at all hours as required to meet its own standards of service.

(284) On or about March 9, 1993, Defendants FROST and MILLS, on behalf of themselves, USCS, and the FTF, conducted an interview with Gail Beech, owner of Aero Freight of El Paso, a direct competitor, and former business associate, of RASMARK. Majority, if not all, of the information that Gail BEACH told to FROST and MILLS were based on rumors and disinformation that she had heard, mainly from former, disgruntled employees. BEACH told the agents that her information was based largely on rumors.

(285) However, FROST, on behalf of himself, USCS, and the FTF, put following uncorroborated rumors and disinformation into his two affidavits of November 19, 1993:

(1) That Mark RASMUSSON told her that he had purchased his aircraft with money he had inherited from his grandfather who was the inventor of the popsicle stick;

(2) That Gail BEACH stated that the RASMUSSONs were engaged in a "kick back" scheme with Joe SUDOMIR and were currently engaged in such a scheme with Andy GANTKESSY;

(3) That she was told by a former RASMARK pilot, Mark MCALLISTER, that Mark RASMUSSON stated, while under the influence of alcohol, that he (RASMUSSON) keeps large amounts of money in bank(s) in the Cayman Islands;

(4) That BEECH stated her salary from her air freight company has never exceeded $38,000.00 in one year. Gail BEECH stated that although charter and air freight rates can be very high the actual operator profit after all expenses is approximately 10 to 12 percent of operator income.

(286) All the remaining inflammatory rumors and false information in the USCS' official systems of records were not placed in the affidavits of November 19, 1993.

(287) Neither FROST or MILLS, USCS, or any other member of the FTF, obtained any credible independent corroborating evidence of any of the rumors and disinformation that they were told by BEACH; yet they incorporated these rumors and disinformation into the official agency's systems of records to be treated as credible facts. FROST, on behalf of himself, USCS, and the FTF, utilized these rumors and disinformation in his two affidavits of November 19, 1993 to obtain search warrants for Deborah L. RASMUSSON's residence at 11157 Leo Collins, El Paso, Texas and the RASMARK business at 6805 Boeing Drive, El Paso, Texas.

(288) On or about March 15, 1993, Defendants FROST, on behalf of himself, USCS, and the FTF, conducted a telephone interview with Steve THORN; BEACH told FROST that THORN is the brother of one of her business partners and that THORN had information on Mark RASMUSSON and an associate. FROST, on behalf of himself, USCS, and the FTF, placed the following rumors and disinformation into his two affidavits of November 19, 1993:

(1) That Mr. THORN stated that he and his wife were at a wedding reception at the Holiday Inn in Taos, New Mexico during October, 1992. During the course of this event, Mr. THORN met a male subject who allegedly gave his name as Don or Ron JOHNSON (per THORN's recollection);

(2) That "JOHNSON" appeared to be under the influence of alcohol;

(3) That Mr. THORN stated he told "JOHNSON" that members of his (THORN's) family had invested in an air freight company (AERO FREIGHT INC) in the El Paso area after "JOHNSON" had mentioned being associated with RASMARK AIR CHARTER. Mr. THORN stated that "JOHNSON" was obnoxious and stated that RASMARK was going to run all other air charters in El Paso out of business;

(4) That "JOHNSON" said he and Mark RASMUSSON were flying controlled substances and drug money "all over the place" and that DEA is aware of their activities but can't catch them. "JOHNSON repeated that "DEA will never catch us";

(5) That "JOHNSON" spoke and behaved as though he were a major part of the RASMARK company and as though he was big in "the Organization"; and,

(289) That FROST states in his affidavits of November 19, 1993 that based on Mr. THORN's description of "JOHNSON" he believes this person to be RASMUSSON associate Donald Mitchell JOSEPH.

(290) Majority, if not all, of the information that THORN told to FROST was based on a one-time conversation that occurred between THORN and Donald JOSEPH, a former employee of RASMARK, at a wedding reception where THORN states JOSEPH appeared to be under the influence of alcohol, and THORN himself was under the influence of alcohol. Because THORN is the brother of a partner of BEACH, he is in the same position as a direct competitor of RASMARK, with the same bias.

(291) Neither FROST, USCS, or any other member of the FTF, obtained any credible independent corroborating evidence of any of the incriminating statements, rumors and/or disinformation attributed to JOSEPH; yet FROST, on behalf of himself, USCS, and the FTF, incorporated these uncorroborated incriminating statements, rumors and/or disinformation into the USCS official agency's systems of records to be treated as credible facts. FROST, on behalf of himself, USCS, and the FTF, utilized these rumors and/or disinformation in his two affidavits of November 19, 1993 to obtain search warrants for Deborah L. RASMUSSON's residence on 11157 Leo Collins and the RASMARK business at 6805 Boeing Drive.

(292) On or about March 16, 1993, Defendants SCHROEDER and HOLLAND, on behalf of themselves, USCS, and the FTF, conducted an interview with Chris HINES, presently an employee of Gail BEACH, owner of Aero Freight of El Paso, a direct competitor, and former employee, of RASMARK. Majority, if not all, of the information that HINES told to SCHROEDER and HOLLAND was based on misinterpretation of inadequate information by HINES, rumors, and disinformation.

(293) FROST, on behalf of himself, USCS, and the FTF, put the following uncorroborated misinterpretation of inadequate information, rumors and disinformation into his two affidavits of November 19, 1993:

(1) That HINES stated that shortly after he started working for RASMARK Jet Charter, Debra RASMUSSON gave him a check for

$4,000.00 and told him to cash the check and bring the money back to her. When Mr. HINES returned the money to Debra RASMUSSON he asked if the money was a Christmas bonus for all of the employees. Debra RASMUSSON stated that it was not. Debra RASMUSSON further allegedly stated that the money was for a person who had given them a lot of business. Mr. HINES believes the money was going to Andy GANTKESSY, the Ford Motor Company contact used by the Rasmussons;

(2) That on another occasion Debra RASMUSSON gave Mr. HINES a check to cash. In the ledger, Debra RASMUSSON allegedly wrote the notation "Chris's Commission". When HINES questioned Debra RASMUSSON about the check, she stated that the money was not for HINES. Debra RASMUSSON went on to allegedly state that she owed Andy (GANTKESSY) some money, but could not put his name on the check.

(3) That Mr. HINES stated when he took bills or invoices for the Ford account he was told not to give the paper work to anyone other than GANTKESSY. Mr. HINES further stated that GANTKESSY and RASMARK Jet Charter were billing Ford for flights that did not occur.

(294) The remaining HINES statements used by FROST in his affidavits of November 19, 1993 are addressed elsewhere in the complaint.

(295) Neither FROST, SCHROEDER, HOLLAND, USCS, or any other member of the FTF, obtained any credible independent corroborating evidence of any of the incriminating statements, misinterpretations of information, rumors and/or disinformation attributed to HINES; yet FROST, SCHROEDER, HOLLAND, on behalf of themselves, USCS, and the FTF, incorporated these uncorroborated incriminating statements, rumors and/or disinformation into the USCS official agency's systems of records to be treated as credible facts. FROST, on behalf of himself, USCS, and the FTF, utilized these misinterpretation of information, rumors and disinformation in his two affidavits of November 19, 1993 to obtain

search warrants for Deborah L. RASMUSSON's residence on Leo Collins and the RASMARK business at 6805 Boeing Drive.

(296) On or about May 3, 1993 El Paso County Sheriffs Detective Jerry Keith, on behalf of himself, EPSD, USCS, alleges in a USCS Report of Investigation that he retrieved from Deborah Rasmusson's trash lot of male clothing, several sets of keys and items of drug paraphernalia and trace amount of cocaine and heroin on certain items.

(297) However, neither Defendant KEITH, EPSD, USCS, or any other member of the FTF, properly maintain a chain of custody of any of the items allegedly found in Deborah L. Rasmusson's trash. Moreover, neither KEITH, USCS, or any other member of the FTF, followed the El Paso Sanitation Department guidelines as set forth by city ordinance in getting approval for sanitation employees to properly collect the trash, isolate it from other trash, and turn it over to USCS or members of the FTF.

(298) In any instance where USCS or members of the FTF actually had a sanitation employee to retrieve the trash from the cabana attached to the residence, the agent November 19, 1993.

(299) At 12:00 PM on May 3, 1993, Defendant KEITH, on behalf of himself, EPSD USCS and the FTF, established surveillance on the Rasmark Jet Charter Office. Detective Keith observed a white colored pick-up, Texas license CB-1779 depart the business. The vehicle is registered to Gildardo ROSALES, 10245 Whitetail, El Paso, Texas."

(300) Neither Defendants KEITH, EPSD, USCS, or any other member of the FTF, obtain any independent corroborating evidence of the items allegedly found in Deborah L. RASMUSSON's trash to show that the items pertain to drug smuggling, money laundering, violations of the Bank Secrecy Act, mail fraud, kickback and payoff schemes or tax evasion.

(301) Moreover, Defendants SCHROEDER, BAKER, KEITH, and HOLLAND, on behalf of themselves, USCS, EPPD, EPSD, and other members of the FTF, failed to maintain a proper chain of custody for any of the items that they alleged came from the trash at the LEO COLLINS residence; they did not obtain written permission from the El Paso Sanitation Department to arrange and permit its employees to collect trash from 11157 Leo Collins and keep it segregated from other trash. Neither did any of the defendants obtain the names of any sanitation workers who allegedly collected and segregated the trash and gave it to the particular agent or agents.

(302) Instead of the defendants following the Sanitation Department guidelines, they simply went onto the Leo Collins property within the curtilage of residence and took the trash from the cabana built onto the residence without a warrant.

(303) However, for the majority of the items, important personal and RASMARK business documents that the Defendants alleged in their affidavits, prepared by FROST, of November 19, 1993 were in the trash were never placed in the trash by either Mark or Deborah Rasmusson, or by anyone on their behalf.

(304) Defendant SCHROEDER, on behalf of himself, KEITH, EPSD, USCS, and other members of the FTF, entered the May 3, 1993 USCS report of investigation into the USCS official agency's systems of records to be treated as credible facts.

(305) On or about June 2, 1993 FROST, SCHROEDER, on behalf of themselves, USCS, ACOSTA, on behalf himself, FBI , HOLLAND, on behalf of himself, EPPD, appeared at GANTKESSY's employment at the Ford Favesa Plant unannounced. The agents harassed and intimidated through interrogation and threats to extract from GANTKESSY, without advising him of his constitutional rights, incriminating statements about his knowledge of Mark and Deborah RASMUSSON and their alleged kickback or payoff schemes.

(306) Defendant SCHROEDER, on behalf of himself,

FROST, ACOSTA, HOLLAND, USCS, FBI, EPPD and other members of the FTF, entered the following Report of Investigation in the USCS agency's official system of records:

(1) "On June 2, 1993, United States Customs Special Agents Lawrence Frost, Fred Schroeder, Larry Brown, Federal Bureau of Investigation Special Agent Joseph Acosta and El Paso Police Department Detective James Holland contacted Andrew GANTKESSY at 15 Leigh Fisher Drive, El Paso, Texas. GANTKESSY is an employee of Favesa (a Mexican subsidiary of Ford Motor Company). GANTKESSY agreed to talk to Agents and was interviewed for a short time about his knowledge and involvement with Debra and Mark RASMUSSON.

(2) GANTKESSY stated that he had received money from Debra and Mark RASMUSSON, however he did not think the money was a pay off. GANTKESSY was told by Debra RASMUSSON that she was giving him the money because she liked him. GANTKESSY further stated that he had gone on several free trips with the RASMUSSONs."

(307) SA Schroeder forced GANTKESSY to come to the USCS Office of Enforcement for a more detailed interview on June 3, 1993 by intimidation and coercion, telling him that if he doesn't he would be arrested.

(308) Because GANTKESSY refused to cooperate with the agents and fabricate information about the RASMUSSONs and RASMARK, the Defendants threatened GANTKESSEY, telling him that he will lose everything at Ford Motor Company.

(309) Defendant SCHROEDER, on behalf of himself, USCS and the other members of the FTF, ordered GANTKESSY to report at the USCS office on Viscount Blvd the next day, June 3, 1993; SCHROEDER told GANTKESSY that if he didn't show up there at the Customs Office, he would be arrested.

(310) GANTKESSY went to the Customs office the next day, June 3, 1993; he was interrogated by Defendants SCHROEDER and ACOSTA, on behalf of themselves, USCS, FBI, and the other members of the FTF without being advised of his constitutional rights.

(311) SCHROEDER, on behalf of himself, ACOSTA, USCS, FBI, and other members of the FTF, entered the following report in the agency's official system of records:

(1) On June 3, 1993, SA Schroeder and Joseph Acosta again interviewed GANTKESSY;

(2) That GANTKESSY stated that Ford Motor Company was looking for a local company to move freight. RASMARK, according to GANTKESSY, had the cheapest rates available at the time and were designated as the primary company by Ford Motor;

(3) That GANTKESSY stated that Ford stopped using RASMARK after some trouble between Debra RASMUSSON and a supervisor at Ford, Joe Sudomir. GANTKESSY stated that Ford is now using Active Area for all freight movements in the El Paso area;

(4) That GANTKESSY stated he had taken money from Debra RASMUSSON, however he did not think it was a bribe or payoff.

(5) GANTKESSY further stated that Debra RASMUSSON had offered him $5,000.000 per charter that he referred to RASMARK, however GANTKESSY refused the offer, stating that he did not make that kind of money and it would look suspicious.

(6) Debra RASMUSSON went on to tell GANTKESSY that she had given an employee of GM, GANTKESSY was not sure about the company, over $100,000.00 for charter work given to RASMARK.

(7) GANTKESSY stated that one week later Debra and Mark RASMUSSON took him to Las Vegas with them. GANTKESSY stated that on this trip Debra RASMUSSON gave him 500.00 in cash and also

money to play the slop machines. The RASMUSSON's paid for all of the expenses involved in the trip. GANTKESSY stated that he accompanied the RASMUSSON's on a total of four trips to Las Vegas, one trip to the Supper Bowel and two other football games in California.

(8) Debra RASMUSSON told GANTKESSY that if anyone ever questioned him about the trips to tell them he had paid for the charter and she would falsify invoices to cover the trips. Debra RASMUSSON also told him not to talk to anyone with out an attorney.

(9) GANTKESSY stated that he received money on several occasions from Debra RASMUSSON, other than on the trips. GANTKESSY stated that Debra RASMUSSON gave him different amounts anywhere from $50.00 to $3,500.00 in cash. GANTKESSY stated that on one of the trips to Las Vegas Mark RASMUSSON gave him $1,200-1,500.00, stating that it was from Debra RASMUSSON. GANTKESSY was not sure however what the total amount that he received was.

(10) GANTKESSY stated that on two occasions Debra RASMUSSON gave him marijuana. The first time was just prior to the first trip to Las Vegas. On the second occasion Debra RASMUSSON gave him an envelope containing money and one cigarette of marijuana.

(11) GANTKESSY stated that Debra RASMUSSON also offered him a percentage of a company she was starting called "NEXT FLIGHT". Debra RASMUSSON stated that the company would be under David CHAVEZ's name in order to qualify for minority status. GANTKESSY stated that he again refused the offer.

(12) GANTKESSY also stated that Debra RASMUSSON made the statement that Mark RASMUSSON had threatened to kill her upon his return from the Cayman Islands.

(312) Defendant SCHROEDER fails to record in the USCS official systems of records that during the interrogation of GANTKESSY, the following events occurred:

(313) That GANTKESSY told the agents that one of the trips he took on RASMARK aircraft he won from a raffle at one of the annual Amigos Air show;

(314) That RASMARK informed its customers that their employees could fly wherever RASMARK, when space is available, at the cost of the current airlines price for a ticket; GANTKESSY went on one trip under this RASMARK's policy;

(315) That any allegations of figures on alleged kickback or payoffs were given to him by the agents; because the interrogation was making him feel sick, he agreed by saying "whatever you say" just to get them to stop questioning him and leave him alone. When the agents mentioned money to Gantkessy, varying amounts, he just said "yes, if you say so." Gantkessy told the agents he wanted a lawyer; they told him "if you want a lawyer we will arrest you."

(316) On June 3, 1993, GANTKESSY was ordered to report to the USCS office on Viscount by Defendant SCHROEDER, on behalf of himself, USCS, ACOSTA, FBI, and other members of the FTF.

(317) Defendants SCHROEDER and ACOSTA, on behalf of themselves, USCS, FBI, and other members of the FTF, interrogated GANTKESSY on June 3, 1993. SCHROEDER and ACOSTA told GANTKESSY that he was in a lot of trouble and that he would lose his job and be arrested because they just have too much evidence against him, Mark and Deborah Rasmusson.

(318) SCHROEDER and ACOSTA asked GANTKESSY many questions, mostly the same questions that they asked on June 2, 1993. SCHROEDER said his boss FROST wanted to put him in jail, but that he SCHROEDER will talk to him if he (GANTKESSY) would cooperate because he seemed like a nice person and they really want to just put Mark and Deborah Rasmusson in jail and out of business.

(319) SCHROEDER and ACOSTA said they will school me as to what to ask and talk about, and that they (Mark and Deborah

Rasmusson) would never know. SCHROEDER and ACOSTA told GANTKESSY that if he cooperated they would call FORD in Dearborn about him losing his job; then SCHROEDER and ACOSTA said "Let's call them (Mark and Deborah Rasmusson) now and get them on tape." They told GANTKESSY not to worry they will tell him what to ask; as Mark or Deborah would answer, they would give him more questions to ask.

(320) GANTKESSY refused to make the call. SCHROEDER and ACOSTA then made threats against him. They told him he would his job and go to jail if he refused to help and wear the wire. GANTKESSY told them that he had to talk to his wife and get back with them. GANTKESSY contacted his attorney, Tony Silva who referred him to another Bernard Panetta. GANTKESSEY told PANETTA what happened and PANETTA advised him not to wear the wire. GANTKESSEY informed SCHROEDER that he would not wear the wire.

(321) SCHROEDER and ACOSTA, on behalf of themselves, USCS, FBI, and other members of the FTF, entered the highly inflammatory statements that all of the agents coerced out of him on June 2, 1993 and June 3, 1993 into the USCS official agency's system of records.

(322) Defendant LAPPE, on behalf of himself, USCS, and the FTF, wrote a highly inflammatory letter to FORD detailing what they termed "irrefutable evidence" of the criminal activities of Mark and Deborah Rasmusson, RASMARK, and Andrew A. Gantkessy, (see **Exhibit 25**).

(323) Subsequent to sending this USCS letter to FORD, Andrew A. Gantkessy lost his job and retirement and RASMARK lost its largest revenue generating customer, its position as their prime charter carrier, and the opportunity to clinch the "Prime Carrier National Contract".

(324) USCS and the FTF task routinely entered into the

agency's official records inflammatory misinterpretations of information, rumors, and disinformation, as set in the above USCS report.

(325) Another instance of the use of surveillance technique of "lookouts" by USCS and the FTF occurred on or about May, 1993, when a RASMARK jet was stopped in Indianapolis, Indiana and the craft was searched without probable cause.

(326) On or about July 26, 1993, SAC LAPPE wrote to a security Investigator at FORD's World headquarters in Dearborn, Michigan. A copy of this letter is attached hereto as **(Exhibit 26)**. LAPPE made numerous unsubstantiated allegations pertaining to Plaintiffs.

(327) On or about August 12, 1993, Ford employee Andrew Gantkessy came to the RASMARK office and showed Mark and Deborah Rasmusson a FAX communication ordering the El Paso Ford Warehouse to cease using RASMARK as a carrier. The order stated that ACTIVE AERO was now designated as FORD's air carrier nation wide. FORD was improperly coerced by the AGENTS into terminating business relations with RASMARK.

(328) On or about August 18, 1993, FROST conducted a meeting with FORD officials PHIL ASIALA, WHQ Security, and TIM POMAVILLE, PTPD Personnel Relations. FROST said the intent of this meeting was an opportunity for FROST to explain the position of USCS in this matter, as it relates to Andrew A. Gantkessy and RASMARK.

(329) FROST further indicated that Gantkessy was deeply involved with the Rasmussons and RASMARK, and described pertinent testimony that implicates Gantkessy in accepting money, air transportation, and other forms of kickbacks from RASMARK. FROST further explained that there are 11 full-time federal agents from other departments within the Federal Government that are assigned on a full time basis to investigating this case. Their investigation centers around

drug trafficking over the border from Mexico to the United States. He indicated that he could not discuss the investigation, nor could he reveal any other details, however, he assured us that Mr. Gantkessy has become a part of the investigation.

(330) FROST reiterated to the FORD officials that the previous position of the government investigation, indicating that although he could not reveal their findings, that he had reviewed the matter with legal counsel. Based upon the advice from Federal lawyers, FROST said they can and will testify as to their knowledge of Gantkessy's activities while employed with FORD.

(331) FROST said although they do not want to jeopardize their ongoing investigation in criminal activities involving RASMARK, he assured the FORD officials that if requested, they (USCS agents) could legally answer questions regarding Gantkessy's activities and testimony during their investigation.

(332) On August 19, 1993, FORD personnel director, Mr. Pomaville and his assistant came to GANTKESSY's office in the warehouse and informed him that he was on immediate suspension with pay. Mr. Pomaville and his assistant packed GANTKESSY's personal items from his desk and escorted GANTKESSY to the warehouse exit. GANTKESSY was ordered not return to the warehouse until the allegations made by Customs against him were investigated and resolved.

(333) On September 24, 1993, FORD officials met with SCHROEDER and HOLLAND. See(**Exhibit 27**). Every statement imputed to GANTKESSY by SCHROEDER is false. SCHROEDER states to the FORD investigator that GANTKESSY cannot take the witness stand and testify. "THESE AGENTS REMINDED US OF ONE VERY IMPORTANT ISSUE. GANTKESSY CANNOT TAKE THE STAND AND TESTIFY ON ANY OF THESE ISSUES IF HE WERE TO BRING A LAWSUIT AT FORD, BECAUSE IT'S A CRIMINAL OFFENSE TO LIE TO FEDERAL AGENTS. IF THE ISSUE GOES TO COURT HE WILL END UP BEING PROSECUTED FOR

FALSIFYING INFORMATION TO THE FEDERAL AUTHORITIES. THEY ARE STILL COOPERATING AND WILLING TO TESTIFY TO GANTKESSY'S PARTICIPATION IN ACTIVITIES OF RASMARK."

(334) On October 4, 1993, GANTKESSY was permanently suspended and forced into early retirement by FORD based on the false and misleading allegations made by FROST, LAPPE, SCHROEDER, HOLLAND, on behalf of themselves, USCS, FBI, IRS, and other members of the FTF, and RASMARK jealous competitors.

(334) In or about January, 1994, GANTKESSY was informed by FORD that his retirement pay would be cut $870.00/mo because FORD stated that GANTKESSY was not entitled to receive the supplemental retirement due to the allegations made against GANTKESSY by U.S. Customs Agents.

(335) On or about March 18, 1994, GANTKESSY was deposed in the case styled Enriquez v. Ford Motor Co. and SUDOMIR, cause no. EP-93-CA-504(B). At the invitation of FORD, FROST was present for the purpose of harassing, intimidating GANTKESSY as to any statements he may make against FORD or Joe Sudomir. GANTKESSY had repeatedly been informed that he was subject to being placed in jail by federal agents if he refused to talk to said agents.

(336) On or about November 22, 1993, FROST, USCS, and other members of the FTF, led a team of about 100 AGENTS and police officers and raided the RASMARK offices at 6805 Boeing and the Rasmusson residence located at 11157 Leo Collins, El Paso, Texas. The RASMARK employees reported that approximately 10-15 agents were searching the aircraft; 10-15 agents were searching the cars, trucks and other ground vehicles; 5-6 agents in each of the five offices going through filing cabinets, boxes, and desks. At the Rasmussons' residence on Leo Collins, there approximately 20-30 agents participating in the search. The AGENTS, removed approximately 40 boxes of records that were essential to the operation of RASMARK from the RASMARK office. Approximately 16 boxes of records were removed from the

Rasmusson's residence. Among the documents seized from the office were supporting documentation for recent charter flights. The companies that chartered the flights require the supporting documents in order for RASMARK to be paid for the charter. Approximately $50,000.00 was lost because the AGENTS had apparently lost the records or refused to return them.

(337) This raid substantially shut RASMARK down for several months which caused RASMARK huge losses in revenue. The affidavits in support of the search warrants were sealed on November 19, 1993 and remained sealed until April 16, 1996.

(338) RASMARK and FORD had been negotiating a contract that would have resulted in RASMARK being FORD's nationwide on call transportation company. Any FORD plant that required jet transportation for cargo would be required to call RASMARK for that service. In late 1992 and early 1993, FORD executives repeatedly stated that FORD's present charter company was not performing satisfactorily. FORD requested that RASMARK make a proposal to FORD for the national carrier contract; in fact, treated RASMARK as the national carrier by dispatching RASMARK instead of Active AERO, their national carrier. While these negations were in progress, RASMARK business relationship. The AGENTs interference caused RASMARK a loss of $55,000,000.00 per year income. In addition, the regular FORD business brought RASMARK income in the amount of about $4,000,000.00 per year which was also lost.

(339) Two search warrants were issued. One for RASMARK and the other for the Rasmusson's residence on Leo Collins. Each warrant was supported by an affidavit by FROST. The affidavit for RASMARK is 22 pages and consists of 115 paragraphs. The affidavit for Leo Collins is 26 pages long and consists of 127 paragraphs. Analysis of each affidavit reveals that neither contains reliable facts that rise to anything more than mere suspicion or agent hunches and unreliable hearsay by RASMARK competitors who are jealous of the business success achieved by RASMARK.

(340) FROST, on behalf of himself, USCS, and the FTF, repeatedly used uncorroborated rumors, innuendoes, misstatements, misinterpretations, and out right fabrications in all three affidavits: May 26, 1992, and the two of November 19, 1993.

(341) The affidavits in their original form do not contain paragraph numbers. For convenience, the paragraphs in each affidavit have been assigned paragraph numbers by Plaintiffs' counsel. Pages 1-10 (paragraphs 1-38) in each affidavit are identical except for minor wording differences in a few paragraphs. The main difference is in the Leo Collins affidavit which contains paragraphs 85, 86, 89, 92, 102-106, and 109-114 which are not in the RASMARK affidavit.

(342) In both the Leo Collins and RASMARK affidavits, FROST states that he has reviewed all of the DEA-6 ROIs (see paragraphs 7-24 in the Leo Collins affidavit) prepared by PERKINS and other agents. FROST then proceeds to use the DEA-6 documents in exactly the same way that DEA used the same DEA-6s before the grand jury that indicted Mark Rasmusson. See paragraphs 46-54 supra.

(343) The allegations in paragraphs 25-34 of the Leo Collins affidavit are made by alleged informants. These informants were found to completely unreliable and the allegations without factual basis, and neither FROST, USCS, or any other member of the FTF, obtained any independent corroborating evidence of statements attributed to informants. Moreover, the statements attributed to the informants are all staled.

(344) The Leo Collins affidavit allegations in paragraphs 35-44 prove Plaintiffs' allegations in paragraphs 66-79 supra.

(345) The Leo Collins affidavit allegation in paragraph 45 proves Plaintiffs' allegation in paragraph 59 supra regarding surveillance of RASMARK offices from the Residency Inn. However, the allegation that suspected drug dealer BARRERA entered the RASMARK office is completely unfounded. At that time, the RASMARK office was in Julies Aviation building which contained offices for several business.

The implication that BARRERA came to see RASMARK is completely unwarranted. The above statement equally applies to paragraph 88 in the Leo Collins affidavit.

(346) The Leo Collins affidavit paragraphs 48-51 confirms Plaintiffs' allegations in paragraphs 84-94 supra.

(347) The Leo Collins affidavit in paragraphs 52-56 imputes allegations to Arturo Vargas a former bookkeeper for RASMARK. Mr. Vargas was fired by RASMARK about a month after he started work. FROST's allegations imputed to Mr. Vargas are completely false.

(348) The Leo Collins affidavit in paragraphs 57-62 contain allegations imputed to EPPD Officer GONGAWARE. Considering that RASMARK's primary customer was FORD and the FORD plants were located in Mexico, it is not unreasonable to assume that on occasion, auto parts would be delivered to the RASMARK hanger by vehicles with Chihuahua plates. Also consider that deadlines for delivery of parts to FORD plants throughout the UNITED STATES was 5:00AM local time for the plant, planes had to be loaded and in the air by 1:00 or 2:00 AM in order to meet production deadlines.

(349) The Leo Collins affidavit paragraphs 63-65 contain allegations imputed to EPPD Officer ANGELO which are not believable on their face. Any EPPD Officer who observed a person carrying a gun near a hotel or a business on a public street does not need permission from his supervisor to arrest that person. FROST's allegations are completely false.

(350) The Leo Collins affidavit paragraphs 67-71 support Plaintiffs' allegations brought against BEACH.

(351) The Leo Collins affidavit paragraphs 71-77 impute to Mr. Steve Thorn allegations against RASMARK and Mark Rasmusson. Consider that Mr. Thorn implies that he has a financial interest in Aero Freight. Mr. Thorn's allegations like all the baseless and slanderous allegations made by BEECH are based on half truths, rumors,

misstatements, misinterpretations, or outright fabrications.

(352) The Leo Collins affidavit paragraphs 78-81 support Plaintiffs' Allegations as to Chris Hines.

(353) The Leo Collins affidavit paragraphs 82-86, 89, 102-106, 109-114 refer to SCHROEDER, EPSD Officers BAKER and KEITH, EPPD Detective HOLLAND, Customs SA BROWN, on behalf of themselves, USCS, and other members of the FTF, allege that documents specified in the above identified affidavit paragraphs were obtained from the trash of the Rasmusson's residence on Leo Collins. The documents referred to in affidavit paragraphs 82-86, 89, 102-106, 109-114 were obtained by the above named agents and officers who covertly entered the Rasmusson residence and removed the documents without a search warrant.

(354) The Leo Collins affidavit in paragraphs 95-100 FROST makes allegations imputed to GANTKESSY. GANTKESSY was threatened with being put in jail if he did not talk to the AGENTS. The AGENTS told GANTKESSY that he could not have an attorney present during interrogation and a host of other threats were made by the AGENTS against GANTKESSY. The AGENTS told GANTKESSY that they would see to it that GANTKESSY would be fired from FORD if GANTKESSY did not say what the AGENTS wanted to hear about RASMARK. FROST's statements in the Leo Collins affidavit imputed to GANTKESSY are false, inaccurate and misleading.

(355) In the Leo Collins affidavit paragraph 116, FROST alleges that Mark Rasmusson "depleted his inheritance before he arrived in El Paso". FROST, HIVICK, MARTINEZ had access to the trust records of both Mark Rasmusson's father and mother (two separate trusts). A vary brief examination of these records reveals that FROST's statement is completely false.

(356) In the Leo Collins affidavit paragraph 116, FROST alleges that Mark Rasmusson "current lifestyle is supported by unknown sources of income". FROST, HIVICK, MARTINEZ had access to the

tax returns of RASMARK and Mark and Deborah Rasmusson which reveal taxable income at a level of $800,000.00 or more. By any standard, this is a lot of spending money. FROST's statement is completely false.

(357) In December, 1993 and in January, 1994, RASMARK office personnel repeatedly contacted FROST requesting records that were required to carry on the business. Mr. Rasmusson wrote a letter dated February 21, 1994 to FROST referencing conversations between RASMARK employee, Mrs. Sanchez, and FROST regarding records that were urgently needed for the year end closing of RASMARK's financial accounting period. In addition, Mr. Rasmusson requested certain maintenance records that were required to be kept by RASMARK per FAA regulation. A large portion of the RASMARK day to day operations were recorded on computer diskettes that were confiscated by FROST and never returned.

(358) However, it was not until June, 1994 that FROST became more cooperative and began to return certain items that Mr. Rasmusson and his employees had been requesting.

(359) On or about April 25, 1995 Deborah L. RASMUSSON, Mark B. RASMUSSON, RASMARK, filed a joint MOTION FOR RETURN OF PROPERTY, Cause Nos.: 93-1240R-01 and 93-1241R-01, to force USCS and the FTF to return over sixty (60) boxes of records seized from RASMARK and the residence of Deborah L. RASMUSSON on or about November 22, 1993.

(360) USCS and the FTF retained custody and control of these aforementioned records and documents continuously since November, 1993, for a period of time in excess of fourteen (14) months. The Government had ample time to review and examine said records and to determine which any of said records they need to retain copies of for any legitimate law enforcement purpose.

(361) As of the date of filing the motion, April 25, 1995, the Government had not filed charges, indicted or prosecuted either MARK

RASMUSSON, DEBORAH RASMUSSON, ANDREW GANTKESSY OR RASMARK or otherwise charged with any criminal offense pertaining to drug smuggling, money laundering, violations of the Bank Secrecy Act, mail fraud, kickback or payoff schemes, or tax evasion.

(362) United States Assistant Attorney David R. Rosado did not oppose the motion and concurred in the filing of the motion by affixing his signature as indicating "No Contest".

(363) On or about May 2, 1995, Janet Reusch, United States Magistrate Judge, signed and entered an order to the United States Customs Service to release all the seized documents to the Movants.

(364) Despite the fact that the USCS and the FTF since approximately 1987 to present have obtained no independent corroborating evidence of any of the Plaintiffs engaged in or engaging in criminal activity pertaining drug smuggling, money laundering, violations of the Bank Secrecy Act, mail fraud, kickback or payoff schemes, or tax evasion, the USCS, DEA, FBI and IRS continue to the present day their tactics of harassment, intimidation, and retaliation by testifying during their depositions that they are still conducting ongoing investigations, including Grand Jury proceedings, of the Plaintiffs and that they are still continuing to submit a variety of facts to the U. S. Attorney's Office in hope of obtaining an indictment against any or all of the Plaintiffs.

(365) Defendants Carol HALLETT, John E. HENSLEY, George WEISE, Michael LAPPE, Donald REAY, and Michael WILCZEWSKI were aware of Defendants FROST, SCHROEDER, MILLS, KING, BROWN, and PETERSON's propensity to commit constitutional violations of any individual whose assets they wanted to steal by developing a bogus investigation because of the persistent and consistent problems throughout the USCS, including specific problems in the Southwest Region which includes the El Paso Customs Office.

(366) The reason that Hallett, HENSLEY, and WEISE had notice of FROST, MILLS' propensity for causing constitutional

violations is that on or about March 20, 1990, Air Interdiction Officer FROST led a party of twelve (12) officers that planned and carried out a raid against a woman and three small children in a residence located at 501 South Mesquite Street in Carlsbad, NM. The raiding party included FROST, MILLS, Special Agent Stokes and nine other agents. Ten agents had semi-automatic guns and two agents had twelve gauge shotguns. FROST kicked down the front door and the masked and hooded agents in military style uniforms stormed into the house causing extreme fear and emotional trauma by pointing weapons at the mother and her children.

(367) Six hours after the agents seized the house, FROST and the other raid team agents moved all furniture and personal property belonging to the family into the street. The family sued FROST. This raid became the subject of a lawsuit styled **Ward v. U.S. Customs Service,** 17 F.3d 317 (10th Cir.1994). The court found the raid team used EXCESSIVE FORCE and had NO PROBABLE CAUSE for searching the home. FROST prepared affidavits for both the seizure warrant and the search warrant. At the time the raid took place, FROST was assigned to the Customs RAC office in Albuquerque, NM. On or about July, 1991, FROST was reassigned from the Customs RAC Office to the Customs SAC Office in El Paso. MILLS was reassigned from the Albuquerque RAC office to the El Paso Customs SAC Office sometime between July, 1991 and 1992.

(368) There is notice and knowledge on the part of Defendants WEISE, HALLETT, HENSLEY, LAPPE, REAY, and WILCZEWSKI, in that early in 1990, Customs Commissioner, Carol HALLETT received 30 letters from Customs agents in the Customs area known as Southwest Region which includes Texas and New Mexico detailing complaints against Customs managers who engaged in transfer of officers as punishment, threats against special agents for complaining about Customs managers, harassment, ridicule, denial of funds for viable cases, and intimidation, lies about individuals, violations of law and agency regulations.

(369) Further notice and knowledge on the part of Defendants

WEISE, HALLETT, HENSLEY, LAPPE, REAY, and WILCZEWSKI, in that late in 1990, Commissioner Carol HALLETT and other Customs executive managers were concerned about persistent allegations in the press of widespread systemic corruption in the Southwest Region. Commissioner HALLETT created a "think tank" group at Customs that met daily to work on this problem. The think tank consisted of Mr. Michael Lane, Ms. Spero and others of considerable stature in the Customs Service trying to determine what the problems were. Commissioner HALLETT did not believe that the problems in Customs were as large as they turned out to be. Commissioner HALLETT admitted that Customs has serious problems in mismanagement problems in southwest Texas.

(370) Further notice and knowledge on the part of Defendants WEISE, HALLETT, HENSLEY, LAPPE, REAY, and WILCZEWSKI, in that on June 3, 1991, Commissioner of Customs, Carol HALLETT, convened a Blue Ribbon Panel of senior federal government executive managers and requested a full and complete examination of allegations of corruption and mismanagement in the Southwest Customs Region. August, 1991, the Blue Ribbon Panel completed its investigation and submitted its report on Integrity and Management issues of the United States Customs Service. It should be noted that Panel member David knowledge on the part of Defendants WEISE, HALLETT, HENSLEY, LAPPE, REAY, and WILCZEWSKI, in that on or about August 8, 1990, FBI Director William Sessions admitted that reporters were misled by Defendant Michael Lappe during an Albuquerque news conference on June 22, 1990 regarding facts pertaining to the seizure of 1600 pounds of Colombian cocaine.

(371) Further notice and knowledge on the part of Defendants WEISE, HALLETT, HENSLEY, LAPPE, REAY, and WILCZEWSKI, in that on or about July 29, 1991, SAC LAPPE ordered the termination of a previously viable narcotics smuggling investigation and enforcement activity.

(372) Further notice and knowledge on the part of Defendants WEISE, HALLETT, HENSLEY, LAPPE, REAY, and WILCZEWSKI,

in that on or about August 13, 1991, GS Olson complained to Southwest Region Commissioner for Enforcement, Jerry Padolino regarding Olson's claims of abuse of authority by SAC Lappe. Olson further advised that he intended to contact Senator Domenici regarding facts that SAC Lappe lied about to the Senator. Mr. Padolino advised that he had brought to the attention of Assistant Defendant HENSLEY the lies SAC Lappe told to Senator Domenici. Mr. Padolino advised Olson that he should report the abuse of authority by Lappe via the whistleblower program.

(373) Further notice and knowledge on the part of Defendants WEISE, HALLETT, HENSLEY, LAPPE, REAY, and WILCZEWSKI, in that on or about August 25, 1991, GS Olson anticipated that Customs management in particular SAC Lappe would take retaliatory action where on August 26, 1991, SAC Lappe had become aware that GS Olson was making allegations against Lappe. Lappe wanted Olson to tell him who the whistle blowers were so Lappe "could wring their necks". On or about July 1992, GS Olson filed a complaint regarding retaliation by SAC Lappe with the Office of Special Counsel.

(374) Further notice and knowledge on the part of Defendants WEISE, HALLETT, HENSLEY, LAPPE, HALLETT, notified all supervisors and Managers are to comply with the Whistleblower Protection Act of 1989. Complaints of violation of the law, rule, regulation, gross mismanagement, gross waste of funds, abuse of authority, danger to public health or safety. Employees have a right to make such disclosures to Office of Special Counsel, Inspector General, or Assistant Commissioner, Office of Internal Affairs, who are designated to receive disclosures.

(375) Further notice and knowledge on the part of Defendants WEISE, HALLETT, HENSLEY, LAPPE, REAY, and WILCZEWSKI, in that On or about October 15, 1991, GS Olson wrote to U. S. Customs Commissioner Carol HALLETT imploring her to examine the El Paso District and not limit the blue-ribbon panel to the San Antonio SAC office case studies.

(378) Further notice and knowledge on the part of Defendants WEISE, HALLETT, HENSLEY, LAPPE, REAY, and WILCZEWSKI, in that by letter dated July 23, 1992, GS Olson wrote to Office of Special Counsel regarding OSC case MA-91-1483 to report prohibited personnel practice alleging reprisal for whistleblowing including documenting 13 allegations.

(379) Further notice and knowledge on the part of Defendants WEISE, HALLETT, HENSLEY, LAPPE, REAY, and WILCZEWSKI, in that by letter dated October 25, 1991, Senator Domenici wrote to advise GS Olson that his complaints regarding SAC LAPPE were referred to Commissioner HALLETT to look into the matter and give an unbiased view of the situation.

(380) Further notice and knowledge on the part of Defendants WEISE, HALLETT, HENSLEY, LAPPE, REAY, and WILCZEWSKI, in that on March 26, 27 and on April 1, 1992, The Commerce, Consumer and Monetary Affairs Committee of the Committee on Government Operations House of Representatives One Hundred Second Congress Second Session held hearings on SERIOUS MISMANAGEMENT AND MISCONDUCT IN THE TREASURY DEPARTMENT, CUSTOMS SERVICE, AND OTHER FEDERAL AGENCIES AND THE ADEQUACY OF EFFORTS TO HOLD AGENCY OFFICIALS ACCOUNTABLE. ("HEARING")

(381) Further notice and knowledge on the part of Defendants WEISE, HALLETT, HENSLEY, LAPPE, REAY, and WILCZEWSKI, in that on March 27, 1992, Southwest Region Customs Special Agent Jim Dukes testified at the HEARING. Agent Dukes testified that he was a whistleblower who stated that he did not believe that Customs has taken any of the action recommended by the Blue Ribbon Panel. Customs hopes to weather the storm and then have business as usual after the tempest passed.

(382) Further notice and knowledge on the part of Defendants WEISE, HALLETT, HENSLEY, LAPPE, REAY, and WILCZEWSKI, in that on March 27, 1992, former Southwest Region Customs Special

Agent Thomas Grieve testified at the HEARING. Mr. Grieve stated that the SAC in the San Antonio Office was operating as though he was not answerable to anyone. He removed managers and replaced them without following any Civil Service regulation. ASAC Michael Lappe was summarily dismissed from his RAC o as the SAC. The mismanagement, misconduct and criminal acts that are presented are real. they are no less so because they are being presented to you by people that are not in favor with the U. S. Customs Service.

(383) Further notice and knowledge on the part of Defendants WEISE, HALLETT, HENSLEY, LAPPE, REAY, and WILCZEWSKI, in that on March 27, 1992, Southwest Region Special Agent Ruiz testified at the HEARING that when he entered the Customs Service, he pledged loyalty to the Constitution of the United States. He has since learned that loyalty to one's supervisors is in Customs more important. Customs management cannot be trusted even to be truthful and honest in its normal course of daily activity. Management has no regard for truth and is willing to lie both officially and unofficially. Office of Enforcement management (OE) fears not for there are no consequences for lying because the OE understands that the full resources of the Federal Government will be used to protect them against any and all of their enemies of this Nation or not. How trusting can the courts be when the very leaders of these officers are willing as a matter course to lie. Managers are willing to perjure themselves in our courts and solicit, allow, and require other officers and members of our profession to lie and perjure themselves in court. Is a citizen really free when the letter and the spirit of the law are in the hands of liars and con men?

(384) Further notice and knowledge on the part of Defendants WEISE, HALLETT, HENSLEY, LAPPE, REAY, and WILCZEWSKI, in that on March 27, 1992, Southwest Region Special Agent Herbert Hailes testified at the HEARING. In April, 1990, a management team "strongly solicited" employee comments for Regional Commissioner James Piatt. Thirty (30) letters were given, criticizing management, detailing improper promotional practices, improper personnel actions, disciplinary travel details, transfers with prejudice, use of public office for private gain, lack of prompt attention to the 30 letters caused

pervasive concern that there had been a coverup. Agent Hailes wrote to Carol HALLETT. He was chastised for writhing her and threatened with transfer and/or removal from government service. Threats, harassment, and retaliation increased due to my cooperation with the subcommittee.

(385) Further notice and knowledge on the part of Defendants WEISE, HALLETT, HENSLEY, LAPPE, REAY, and WILCZEWSKI, in that the HEARINGS established that Treasury OIG and Customs Internal Affairs were mere arms of management in which OIG and IA investigations were biased and compromised by the very management they investigated.

(386) Further notice and knowledge on the part of Defendants WEISE, HALLETT, HENSLEY, LAPPE, REAY, and WILCZEWSKI, in that on or about September 2, 1992, GS Olson wrote to Congressman J. J. Pickle, Chairman, Subcommittee on Oversight regarding claims of retaliation, abuse of power, mismanagement, illegal use of undercover funds, misuse of government vehicle, and other claims of illegal acts.

(387) Further notice and knowledge on the part of Defendants WEISE, HALLETT, HENSLEY, LAPPE, REAY, and WILCZEWSKI, in that on August 24, 1992, attorney Wales wrote Special Agent James Tighe of the Office of the Inspector General regarding claims on behalf of Agent James McCarthy arising out of misconduct, malfeasance in office and possible legal wrongdoing by SAC LAPPE and other Customs agents and personnel under SAC LAPPE's command.

(388) Further notice and knowledge on the part of Defendants WEISE, HALLETT, HENSLEY, LAPPE, REAY, and WILCZEWSKI, in that on or about December 11, 1992, GS Olson wrote to Mr. Robert Warren, Associate Commissioner Office of Organizational Effectiveness, Headquarters, U. S. Customs alleging retaliation, by investigator Vincent Russell, Suppression of reports of misconduct by El Paso SAC committed by Customs Internal Affairs, retaliation against Agent Eric Andreucci general investigations (funds from Operation Transwestern, Operation Red Chilli, and Operation Cavern).

(389) Further notice and knowledge on the part of Defendants WEISE, HALLETT, HENSLEY, LAPPE, REAY, and WILCZEWSKI, in that on or about November 12, 1992, by Affidavit GS Olson wrote to Mr. Reukauf in the Office of Special Counsel alleging misconduct, retaliation, etc., noting that Assistant Commissioner Enforcement John HENSLEY was notified of the allegations against LAPPE and has taken no corrective action.

(390) Further notice and knowledge on the part of Defendants WEISE, HALLETT, HENSLEY, LAPPE, REAY, and WILCZEWSKI, in that in 1985, Customs Headquarters made a decision to stop the independent management inspection program that reviewed all of the regions and the SAC/RAC offices. This decision weakened the importance of management systems for day-to-day operations because Customs Senior management had no oversight reviews on how well front line managers were managing. **(Blue Ribbon Panel-20 (BRP))** No managers in the region or the SAC offices accepted responsibility or accountability. Many of the agents in the office of enforcement did not accept supervision readily. At the same time supervisors did not know how to supervise effectively. **(BRP 24)**.

(391) Further notice and knowledge on the part of Defendants WEISE, HALLETT, HENSLEY, LAPPE, REAY, and WILCZEWSKI, in that the Panel found personnel at every level in the Southwest Office of enforcement neither accept responsibility for managerial deficiencies nor are held accountable for their actions. The absence of a clear line of authority contributes to the problem. First line supervisors in the Southwest Region are inexperienced and lack proper training. **(BRP CONCLUSIONS P.16 FINDING 1 AND 8)**

(392) Further notice and knowledge on the part of Defendants WEISE, HALLETT, HENSLEY, LAPPE, REAY, and WILCZEWSKI, in that Customs agents operating in the Southwest border need special attention to unique training requirements, technical law enforcement skills, Spanish language proficiency, emphasis on increased vulnerability concerns, and rigid adherence to constitutional and ethical standards. **(BRP finding (1) p.24)**

(393) Further notice and knowledge on the part of Defendants WEISE, HALLETT, HENSLEY, LAPPE, REAY, and WILCZEWSKI, in that Congressman Martinez observed that individual Customs officers and Immigration officers at the border are prone to, after a while getting into things they're not supposed to get into. Treating people in a bad way, almost as if they are totally insignificant bugs that they can, at will, squash and step on and treat badly. (**BRP at 47**).

(394) Further notice and knowledge on the part of Defendants WEISE, HALLETT, HENSLEY, LAPPE, REAY, and WILCZEWSKI, in that confidential sources of information are promised a percentage of the assets seized from drug violators and large sums of money are routinely made-53) Part of the **OCDETF** application contains a list of the assets that the Customs Service sought to seize from RASMARK and other Plaintiffs. (**BRP 54**). Allegations of corruption brought against any Customs agent by another agent are met with Customs contempt for anyone who dared to blow the whistle on another agent. (**BRP 55-56**).

(395) Further notice and knowledge on the part of Defendants WEISE, HALLETT, HENSLEY, LAPPE, REAY, and WILCZEWSKI, in that based on experience working with Customs Service, it seems apparent that the management of Customs is more concerned with covering up or denying the problems than dealing with them. It appears as though Customs management is more concerned with Elysian management than reality management, putting up a good front as the interior rots away. (**BRP 56**). Customs management uses its power to defeat the field agents's efforts. (**BRP 56**). Customs Agents poor performance often results in incompetent agents getting cash awards from Customs Service management. (**BRP 57**) Typical investigative technique used by Customs is to build a list of suspects from auto license plates of cars parked in a parking lot of business owned by a target. (**BRP 52**). (Note that less than mere association with the target is sufficient for Customs to infer criminal activity as where Customs alleged that Mark Rasmusson did business with an associate of Portillo which was sufficient without more to bring the full investigative resources of Customs against Plaintiffs.)

(396) Each and every Defendant in the present case before the Court knew from the beginning of the investigation of MARK B. RASMUSSON, DEBORAH L. RASMUSSON, RASMARK JET CHARTER, INC., AND ANDREW A. GANTKESSY that their investigation against any of the Plaintiffs was a bogus and sham investigation, whether it before 1990, between 1991 and March of 1992, or from March of 1992 to the present.

COUNT I
FIRST CAUSE OF ACTION

CONSPIRACY TO DEPRIVE PLAINTIFFS OF THEIR RIGHTS PROTECTED BY THE FIRST, FOURTH, FIFTH AND FOURTEENTH AMENDMENTS AND COVER UP OF CONSPIRACY

(397) For their first cause of action against **LENOX, SCHROEDER, WILCZEWSKI, FROST, MILLS, REAY, LAPPE, KING, BROWN, PERKINS, CHAVEZ, AGUIRRE, HIVICK, MARTINEZ, ACOSTA, SALAS, HOLLAND, BAKER, KEITH,**

PLAINTIFFS STATE:

(398) At all times relevant to this lawsuit, **LENOX, SCHROEDER, WILCZEWSKI, FROST, MILLS, REAY, LAPPE, KING, BROWN, PERKINS, CHAVEZ, AGUIRRE, HIVICK, MARTINEZ, AND ACOSTA,** were acting individually and in concert under color of their federal authority, federal laws, statutes, regulations, policies, customs or usages of the USCS, FBI, IRS, AND DEA and they violated Plaintiffs' rights, privileges and immunities secured to Plaintiffs by the First, Fourth and Fifth Amendments to the Constitution of the United States, and other federal law, and, individually and in concert, in cover up of their conspiratorial acts. This cause of action is brought against them pursuant to the Bivens Doctrine.

(399) At all times relevant to this lawsuit, SALAS, HOLLAND, BAKER, AND KEITH were acting in their individual and

official capacity as police officers, individually and in concert under color of the laws, statutes, ordinances, regulations, policies, customs or usages of the State of Texas, County of El Paso, and the City of El Paso and they violated Plaintiffs' rights, privileges and immunities secured to Plaintiffs by the First, Fourth, and/or Fourteenth Amendments to the Constitution of the United State, and, individually and in concert, in cover up of their conspiratorial acts . This cause of action is brought against them pursuant to 42 U.S.C. § 1983.

(400) Defendants LENOX, WILCZEWSKI and SCHROEDER, joined the conspiracy during the period 1987 and 1990. Defendants PERKINS, CHAVEZ, MARTINEZ and AGUIRRE joined the conspiracy during the period 1989 to 1991. Defendants REAY, LAPPE, HENSLEY and HALLETT joined the conspiracy during the period 1990 to 1992. Defendants BROWN, HIVICK, FROST, MILLS, ACOSTA, SALAS, BAKER, HOLLAND, and KEITH joined the conspiracy between 1991 and 1993.

DEFENDANTS VIOLATION OF PLAINTIFFS' RIGHTS PROTECTED BY THE FOURTH, FIFTH AND/OR FOURTEENTH AMENDMENTS AND COVER UP OF THEIR CONSPIRATORIAL ACTS

(401) Defendants individually and in concert engaged in a pattern of harassment, intimidation, coercion, and retaliation against Plaintiffs as part of an over all conspiracy to steal the assets of Mark and Deborah Rasmusson through the forfeiture process. The pattern of harassment, retaliation, intimidation by Defendants against Plaintiffs began in 1987 and continues uninterrupted to today. Defendants extended this pattern of intimidation, harassment, and retaliation to Plaintiffs' friends, customers, business associates, and employees. Plaintiffs' good name, reputation, and business goodwill was destroyed by Defendants' oral and written communications in which Defendants stigmatized Plaintiffs as drug dealers, money launders, and major criminals. Defendants communication of completely false and fabricated facts to The Ford Motor Company violated Plaintiffs' due process and equal protection rights protected by the Fifth Amendment

and/or Fourteenth Amendment, and the Defendants, individually and in concert, engaged in a cover up of their conspiratorial acts from on or about 1987 to the present.

(402) Defendants actions, individually and in concert, coerced The Ford Motor Company to terminate its business relationship with Plaintiffs Mark B. Rasmusson, Deborah L. Rasmusson, RASMARK. Defendants actions caused The Ford Motor Company to terminate hiring Mark B. Rasmusson and Deborah L. Rasmusson, and RASMARK as its primary air transportation carrier a position Mark B. Rasmusson, Deborah L. Rasmusson, and RASMARK held for over two years prior to the coercive tactics used by Defendants in falsely accusing Plaintiffs of engaging in illegal and criminal activity all of which was completely false. Defendants actions violated Plaintiffs Mark and Deborah Rasmusson's Fifth and/or Fourteenth Amendments liberty and/or property interest in pursuing common occupations without due process of law, and the Defendants, individually and in concert, engaged in a cover up of their conspiratorial acts from on or about 1987 to the present.

(403) Defendants, individually and in concert, caused the Ford Motor Company to terminate its employment of Andrew A. Gantkessy causing Andrew A. Gantkessy to loose his job which he had held for 27 years by falsely accusing Plaintiff Gantkessy of engaging in kickbacks or payoffs schemes and in other illegal and criminal activity with the Rasmussons and RASMARK all of which was defamatory and completely false and stigmatized GANTKESSY. Defendants actions violated Plaintiff Gantkessy's Fifth and/or Fourteenth Amendment liberty and/or property interest in pursuing a common occupation without due process of law, and the Defendants, individually and in concert, engaged in a cover up of their conspiratorial acts from on or about 1987 to the present.

(404) In the period 1987 through 1997, it was clearly established that Plaintiffs had a constitutionally protected liberty and/or property interest in pursuing common occupations.

(405) By this reference, Plaintiffs incorporate each and every allegation and averment contained in Paragraphs 1-XXX [1-396]as though fully set forth in Plaintiffs' FIRST CAUSE OF ACTION.

(406) In or about 1987, Customs employees, individually and in concert, initiated harassment actions against Plaintiffs. Customs inspectors and enforcement agents caused 1-2 hour delays, strip searched passengers and crew members without probable cause or reasonable suspicion, disassembled portions of the aircraft without probable cause or reasonable suspicion, rummaged through baggage, spilled liquids on aircraft carpeting, and treated passengers and crew members as if they were despicable insects, and the Defendants, individually and in concert, engaged in a cover up of their conspiratorial acts from on or about 1987 to the present.

VIOLATION OF PLAINTIFF'S FIRST AMENDMENT RIGHTS AND COVER UP OF CONSPIRATORIAL ACTS

(407) After the complaint committee had its first meeting on or about May 2, 1989, and 30 or more pilots and carriers led by Mark B. Rasmusson submitted their individual and collective complaints to Customs managers Mack, Nowak, and Robles the level of intensity of harassment and retaliation against Mark and Deborah Rasmusson and Rasmark Jet Charter , Inc. increased to an intolerable point. As a last resort, Mark and Deborah Rasmusson wrote to Senator Kennedy regarding the insidious and disparate treatment by Customs. These complaints came to the attention of Acting Customs Commissioner Lane in October, 1989 and then to Commissioner Hallett in November, 1989.

(408) In the period 1987 through 1997, it was clearly established that Plaintiffs had a constitutional right to be free from retaliation, harassment, and intimidation for exercising their protected free speech pursuant to the provisions of the First Amendment.

(409) Commissioner Hallett created a "Think Tank" to deal with complaints on a daily basis. HALLETT had major problems of corruption, dereliction of duty, theft, mismanagement, poor managers

and several scandals were in progress by mid 1990. In order to satisfy the press and the public that she was taking action to clean up the mess, she created the Blue Ribbon Panel whose job was to investigate and offer solutions which she as Commissioner would implement. It was in this period of public scandal that Mark and Deborah Rasmusson's names came to HALLETT's attention. However, virtually none of the Blue Ribbon Panel recommendations were put into effect and Customs remains to this day as an agency with no accountability for illegal or mismanagement acts.

(410) Defendants, individually and in concert, singled out Mark and Debra Rasmusson and RASMARK and treated them differently than any other air carrier or other persons or business similarly situated in violation of their right to equal protection of the law as provided in the Fifth Amendment and/or Fourteenth Amendments, and the Defendants, individually and in concert, engaged in a cover up of their conspiratorial acts from on or about 1987 to the present.

(411) The acts and omissions of Defendants **LENOX, SCHROEDER, WILCZEWSKI,** individually and in concert, with coconspirators Paul Neely, Belen Robles, William Nowak, and Mike Mack, deprived Mark B. Rasmusson, Deborah L. Rasmusson and Rasmark Jet Charter, Inc., and other pilots (not named as plaintiffs) of their right to be free from harassment, intimidation, and retaliation, for exercising their right to free speech and free association to organize pilots as a complaint group to protest what they perceived as Customs'"Nazi Gestapo" style treatment accorded Plaintiffs each time Plaintiffs passed through Customs inspection at Port of Entries in the United States, Mexico, and Canada. Defendants LENOX, SCHROEDER, and WILCZEWSKI, individually and in concert, either personally or caused others to act on their behalf to deprive Mark B. Rasmusson, Deborah L. Rasmusson and Rasmark Jet Charter, Inc., of their clearly established right to free speech, due process, and equal protection rights under the First and Fifth and/or Fourteenth Amendments respectively, and the Defendants, individually and in concert, engaged in a cover up of their conspiratorial acts from on or

about 1987 to the present.

(412) Defendants PERKINS, CHAVEZ, AGUIRRE, and Special Agent Paul Neely and Defendant SCHROEDER, individually and in concert, joined the Count I conspiracy sometime between 1987 and 1989.

(413) During the period between 1988 and 1989, RASMARK and all the Jet Charter carriers' pilots were experiencing a high level of harassment by Customs officials. In 1989 Mark Rasmusson organized a "Complaint Commission" consisting of 30 professional pilots in the El Paso area. The Complaint Commission held a meeting of pilots and carriers on May 2, 1989, in the hanger of Southwest Air Rangers. Seventeen pilots and carriers signed in for meeting. At least six others attended but refused to put their name on the sign in sheet for fear of increased harassment or retaliation for complaining about the egregious treatment accorded pilots and carriers in the El Paso area by Customs agents and inspectors.

(414) After Customs seized all or the RASMARK records, documents and computer software on November 22, 1993, Defendant FROST refused to return items that were crucial to the running of the RASMARK business. This refusal to cooperate by FROST, was in further harassment, intimidation and retaliation against Plaintiffs in violation of their protected and well established rights pursuant to the First, Fifth and/or Fourteenth Amendments, and the Defendants, individually and in concert, engaged in a cover up of their conspiratorial acts from on or about 1987 to the present.

COUNT II
SECOND CAUSE OF ACTION

FEDERAL AGENTS CREATED BOGUS REPORTS OF INVESTIGATION IN VIOLATION OF PLAINTIFFS' FIFTH AMENDMENTS RIGHTS AND COVER UP OF CONSPIRATORIAL ACTS

(415) For their second cause of action against **PERKINS, LENOX, CHAVEZ, AGUIRRE, SCHROEDER, AND MARTINEZ,** individually and in concert, violated Plaintiffs clearly established equal protection and due process rights protected Fifth Amendment,

PLAINTIFFS STATE:

(416) At all times relevant to this lawsuit, **PERKINS, LENOX, CHAVEZ, AGUIRRE, SCHROEDER, AND MARTINEZ,** were acting under color of their federal authority, federal laws, statutes, regulations, policies, customs or usages of the DEA, USCS, IRS. They, individually and in concert, violated Plaintiffs' rights, privileges and immunities secured to Plaintiffs by the Fifth Amendment, and the Defendants, individually and in concert, engaged in a cover up of their conspiratorial acts from on or about 1987 to the present. This cause of action is brought against them pursuant to the Bivens Doctrine.

(417) By this reference, Plaintiffs incorporate each and every allegation and averment contained in Paragraphs 1-396 as though fully set forth in Plaintiffs' SECOND CAUSE OF ACTION.

(418) PERKINS, with the approval and/or acquiescence of AGUIRRE, created bogus DEA-6 ROI'S in which he deliberately placed false information imputing illegal conduct to RASMARK, Mark and Deborah Rasmusson. The false, bogus, DEA-6 ROI's in question are described in foregoing paragraphs of the complaint.

(419) PERKINS, LENOX, CHAVEZ, and AGUIRRE represented DEA, USCS SPECIAL AGENT PAUL NEELY (not a defendant) Defendant SCHROEDER represented USCS, MARTINEZ represented IRS, EPPD, EPSD, and DPS were partners with DEA, USCS, FBI, INS, IRS, individually and in concert, as members of the DEA OCDETF that was organized and constructed to investigate Flores and Mark Rasmusson. The goal of the OCDETF PARTNERSHIP was to obtain a share of the money and property seized from Flores and from the Rasmussons. Therefore, all the actions by each partner and/or the

partner's representative officers or agents assigned to the DEA OCDETF acted individually and in concert on behalf of the other partners or officers or agents.

(420) On behalf of DEA, the OCDETF PARTNERSHIP and himself, PERKINS committed perjury on September 19, 1990, when he testified under oath before a federal grand jury and by placing into evidence his bogus DEA-6 ROI's containing the false facts and misleading information in his ROI's PERKINS created. PERKINS acts subverted the fact finding duty of the grand jury process. In August and in September, 1990, it was clearly established law that commission of perjury in grand jury testimony and perjury in trial testimony was then and is now a violation of rights protected by the Fifth Amendment and the Fourteenth Amendment of which PERKINS, AGUIRRE, CHAVEZ, LENOX, AND SCHROEDER knew or should have known.

(421) CHAVEZ, LENOX, AGUIRRE, SCHROEDER, and MARTINEZ knew or should have known the information in the PERKINS' DEA-6 ROI'S was false. CHAVEZ, LENOX, AGUIRRE, MARTINEZ, and SCHROEDER each had a duty to prevent false information from being placed before the grand jury but CHAVEZ, LENOX, AGUIRRE, MARTINEZ, and SCHROEDER acquiesced and failed to stop the DEA-6 ROI'S from being placed into evidence before the grand jury or once in evidence, they failed to take corrective action so the grand jury would know the ROI's were false.

(422) CHAVEZ, LENOX, AGUIRRE, MARTINEZ, and SCHROEDER knew or should have known the PERKINS' DEA-6 ROI's were bogus and contained PERKINS' lies and material misrepresentations of facts and statements imputed to Mark and Deborah Rasmusson and to RASMARK employees.

(423) **CHAVEZ, LENOX, AGUIRRE, MARTINEZ**, and **SCHROEDER** knew or should have known that PERKINS violated 18 U.S.C. § 1623 which was clearly established law in 1990 at the time PERKINS gave false testimony before the grand jury.

(424) CHAVEZ, LENOX, AGUIRRE MARTINEZ, and SCHROEDER knew or should have known that PERKINS violated the provisions of 18 U.S.C. § 1001 which was clearly established in 1990 when he deliberately placed false information in official DEA ROI's.

(425) PERKINS' fabrication of bogus facts, placing the bogus facts in DEA-6 ROI's, presenting, with the approval and/or acquiescence of LENOX AND AGUIRRE, the bogus ROI's into evidence at a federal grand jury was done in deliberate indifference or complete disregard for the truth in violation of Mark and Deborah Rasmusson's and RASMARK's due process and equal protection rights protected by the Fifth Amendment.

(426) As a direct and proximate cause of PERKINS perjured grand jury testimony and the entry of PERKINS' false and bogus ROI's into evidence before the grand jury, Mark Rasmusson was indicted and brought to trial on charges PERKINS knew were bogus and without factual basis in truth. PERKINS acted unreasonably and in reckless disregard for the truth in wrongfully seeking and securing a grand jury indictment of Mark B. Rasmusson and carrying out the arrest and trial of Mark B. Rasmusson causing great expense, mental anguish and emotional trauma.

(427) PERKINS, with the approval and/or acquiescence of LENOX AND AGUIRRE, conducted interviews of Mark and Deborah Rasmusson and several RASMARK employees falsely claiming to gather information on FLORES but FLORES was already under indictment. The ulterior purpose was to gather incriminating information of Mark and Deborah Rasmusson and on RASMARK. PERKINS knew that Mark and Deborah Rasmusson were targets in at least two federal investigations at the time PERKINS carried out interrogations of the Rasmussons. PERKINS intentionally kept secret that information when he was interviewing the Rasmussons, that it was the Rasmussons not FLORES who were the targets of PERKINS investigation. PERKINS did not inform the Rasmussons of their Miranda rights at any time during the course of several interrogations. When no incriminating information was obtained, PERKINS, with the

approval and/or acquiescence of LENOX AND AGUIRRE, created incriminating information and inserted the false information into his DEA-6 ROI's and stated therein that the information (albeit false) came from the person being interrogated. The sole purpose of creating the bogus DEA-6 ROI's was to present false information to the grand jury to get the RASMUSSONS indicted. That the purpose of the interrogations of the Rasmussons was for their indictment is clear from the fact that Jesse FLORES had been indicted several months earlier and he was in jail without bond. The bogus DEA-6 ROI's are dated as follows:

(a) August 23, 1990 Deborah Rasmusson; (prepared August 26, 1990)

(b) August 23, 1990 Mark and Deborah Rasmusson; (prepared on September 17, 1990)

(c) August 26, 1990 RASMARK pilot BURNETT; (prepared September 7, 1990)

(d) August 27, 1990 RASMARK employee Suzanne Zaldivar; Prepared on September 18, 1990)

(e) August 27, 1990 RASMARK employee David Chavez; (prepared on September 1, 1990)

(f) August 27, 1990 RASMARK pilot Jim Young and Deborah Rasmusson; (prepared on September 15, 1990)

(g) August 28, 1990 RASMARK accountant Apodaca; (prepared on September 13, 1990)

(h) August 29, 1990 Mark and Deborah Rasmusson; (prepared on September 5, 1990), and the Defendants, individually and in concert, engaged in a cover up of their conspiratorial acts from on or about 1990 to the present.

(428) September 19, 1990 Mark Rasmusson was indicted.

(429) Mark Rasmusson was acquitted on the bogus charges by a directed verdict acquittal prior to the case being submitted to the jury. It was obvious that the prosecution had not a single shred of evidence that would impute any illegal activity to Plaintiff Mark B. Rasmusson.

COUNT III
THIRD CAUSE OF ACTION

FEDERAL AGENTS AND STATE OFFICERS CARRIED OUT ILLEGAL SEARCH AND SEIZURE RAIDS ON PLAINTIFFS' PROPERTY, AIRCRAFT, AUTOMOBILES, HOME, BUSINESS IN VIOLATION OF PLAINTIFFS' RIGHTS PROTECTED BY THE FOURTH AMENDMENT AND COVER UP OF THEIR CONSPIRATORIAL ACTS

(430) For their third cause of action against **LENOX, SCHROEDER, WILCZEWSKI, FROST, MILLS, REAY, LAPPE, KING, BROWN, PERKINS, CHAVEZ, AGUIRRE, HIVICK, MARTINEZ, ACOSTA, HALLETT, HENSLEY, WEISE, SALAS, HOLLAND, BAKER, KEITH,**

PLAINTIFFS STATE:

(431) At all times relevant to this lawsuit, **LENOX, SCHROEDER, WILCZEWSKI, FROST, MILLS, REAY, LAPPE, KING, BROWN, PERKINS, CHAVEZ, AGUIRRE, HIVICK, MARTINEZ, ACOSTA, HENSLEY, HALLETT, AND WEISE,** individually and in concert, were acting under color of their federal authority, federal laws, statutes, regulations, policies, customs or usages of the USCS, FBI, INS, IRS, and DEA. **LENOX, SCHROEDER, WILCZEWSKI, FROST, MILLS, REAY, LAPPE, KING, BROWN, PERKINS, CHAVEZ, AGUIRRE, HIVICK, MARTINEZ, ACOSTA, HENSLEY, HALLETT and WEISE** violated Plaintiffs' rights, privileges and immunities secured to Plaintiffs

by the First, Fourth and Fifth Amendments to the Constitution of the United States, and the Defendants, individually and in concert, engaged in a cover up of their conspiratorial acts from on or about 1987 to the present. This cause of action is brought against them pursuant to the Bivens Doctrine.

(432) At all times relevant to this lawsuit, **SALAS, HOLLAND, BAKER, AND KEITH,** in their individual and official capacity as police officers and individually and in concert, were acting under color of the laws, statutes, ordinances, regulations, policies, customs or usages of the State of Texas, County of El Paso, and the City of El Paso and they violated Plaintiffs' rights, privileges and immunities secured to Plaintiffs by the First, Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States, and the Defendants, individually and in concert, engaged in a cover up of their conspiratorial acts from on or about 1991 to the present. This cause of action is brought against them pursuant to 42 U.S.C. § 1983.

(433) By this reference, Plaintiffs incorporate each and every allegation and averment contained in Paragraphs 1-396 as though fully set forth in Plaintiffs' THIRD CAUSE OF ACTION.

DEFENDANTS VIOLATION OF PLAINTIFFS' RIGHTS PROTECTED BY THE FOURTH, FIFTH AND/OR FOURTEENTH AMENDMENTS AND COVER UP OF THEIR CONSPIRATORIAL ACTS

(434) As part of Defendants continuing pattern of harassment, intimidation, and retaliation against Plaintiffs and as part of an over all conspiracy to steal the assets of Mark and Deborah Rasmusson through the forfeiture process, Defendants carried out the following searches and seizures, prepared false affidavits to obtain warrants where no probable cause existed to legitimately obtain a warrant and where no probable cause existed, no exigent circumstances existed. Defendants carried out warrantees searches and seizures of Plaintiffs' person, property, automobiles, aircraft, business and home in violation of Plaintiffs' constitutional right to be free from unreasonable searches and

seizures protected by the Fourth and Fourteenth Amendments and Plaintiffs' due process and equal protection rights protected by the Fifth Amendment and Fourteenth Amendment, and the Defendants, individually and in concert, engaged in a cover up of their conspiratorial acts from on or about 1987 to the present.

(435) During the period 1987 through the present time, it was clearly established that Plaintiffs had a Fourth Amendment right to be free from unreasonable searches and seizures by federal Defendants.

(436) During the period 1987 through the present time, it was clearly established that Plaintiffs had a Fourteenth Amendment right to be free from unreasonable searches and seizures by state Defendants.

(437) During the period 1987 through the present time, it was clearly established that Plaintiffs had a Fifth Amendment right to due process and equal protection of the law from federal officials.

(438) During the period 1987 through the present time, it was clearly established that Plaintiffs had a Fourteenth Amendment right to due process and equal protection of the law as to state officials.

(439) In the period 1987 through 1997, it was clearly established that Plaintiffs had a constitutionally protected liberty and property interest in pursuing common occupations.

(440) On or about October 6, 1988, Rasmark jet 44CP was seized in Brownsville by agents, individually and in concert, acting on behalf of Customs without probable cause or a search warrant in violation of Plaintiffs' Fourth Amendment clearly established right to be free from unreasonable searches and seizures.

(441) On or about May 23, 1992, defendants FROST, SCHROEDER, MILLS, WILCZEWSKI, REAY, HOLLAND, AND SALAS, individually and in concert, seized a box of records from Plaintiff Deborah L. Rasmusson without a warrant and without probable cause or exigent circumstances in violation of Plaintiffs' Fourth

Amendment clearly established right to be free from unreasonable searches and seizures.

(442) On or about November 10, 1992, FROST, SCHROEDER, MILLS, WILCZEWSKI, EPPD police officers, individually and in concert, searched in an unreasonable manner the person of Plaintiff Deborah Rasmusson, searched her vehicle without a warrant, without probable cause and without exigent circumstances. On or about November 10, 1992, FROST, individually and in concert with other agents, seized Plaintiff Deborah Rasmusson' vehicle without a warrant, without probable cause, without exigent circumstances in violation of Plaintiffs' Fourth Amendment clearly established right to be free from unreasonable searches and seizures, and the Defendants, individually and in concert, engaged in a cover up of their conspiratorial acts from on or about 1987 to the present. All the acts and conduct of the Defendants made subject of the complainant was objectively unreasonable.

(443) On or about June 1, 1993, FROST, BROWN, ACOSTA, MILLS, SCHROEDER, AND HOLLAND, individually and in concert, seized and searched a RASMARK jet at El Paso International airport without probable cause, without a warrant in violation of Plaintiffs' Fourth Amendment clearly established right to be free from unreasonable searches and seizures and the Defendants, individually and in concert, engaged in a cover up of their conspiratorial acts from on or about 1990 to the present. All the acts and conduct of Defendants made subject of complaint was objectively unreasonable.

(444) On or about June 17, 1993, FROST, BROWN, WILCZEWSKI, REAY, LAPPE, SCHROEDER, MILLS, individually and in concert, assisting Customs' agents Lue Jackson, Larry Harrell, Dante Orate, C.W. Moore, Cynthia Mandujan, Daniel Ramirez, seized and searched RASMARK jet 25TK without a warrant, without probable cause, and without exigent circumstances in violation of Plaintiffs' Fourth Amendment clearly established right to be free from unreasonable searches and seizures, and the Defendants, individually and in concert, engaged in a cover up of their conspiratorial acts from

on or about 1990 to the present. All the acts and conduct of the Defendants made the subject of the complaint was objectively unreasonable.

(445) On or about September 1, 1993, FROST, WILCZEWSKI, REAY, LAPPE, HENSLEY, WEISE, SCHROEDER, MILLS, individually and in concert, assisting Customs' agents Lue Jackson, Larry Harrell, Dante Orate, C.W. Moore, Cynthia Mandujan, Daniel Ramirez, DEA agent Bill Inselmann and FAA agent Leo Cungman seized and searched RASMARK jet while parked at Signature Flight Support on Dallas Love Field without a warrant, without probable cause and without exigent circumstances in violation of Plaintiffs' Fourth Amendment clearly established right to be free from unreasonable searches and seizures, and the Defendants, individually and in concert, engaged in a cover up of their conspiratorial acts from on or about 1990 to the present. All the acts and conduct of the Defendants made subject of the complaint was objectively unreasonable.

(446) On November 22, 1993, FROST, WILCZEWSKI, REAY, LAPPE, SCHROEDER, MILLS, individually and in concert, assisting Customs' agents Lue Jackson, Larry Harrell, Dante Orate, C.W. Moore, Cynthia Mandujan, Daniel Ramirez, and other federal and state agents, searched the RASMARK Office with a warrant supported by an affidavit that contained completely false, misleading, information designed to deceive the magistrate into issuing a search warrant based on bogus facts in violation of Plaintiffs' Fourth Amendment clearly established right to be free from unreasonable searches and seizures and in violation of Plaintiffs right to due process and equal protection protected by the Fifth Amendment and the Fourteenth Amendment, and the Defendants, individually and in concert, engaged in a cover up of their conspiratorial acts from on or about 1987 to the present. All the acts and conduct of the Defendants made subject of the complaint was objectively unreasonable.

(447) On November 22, 1993, FROST, WILCZEWSKI, REAY, LAPPE, SCHROEDER, MILLS, HOLLAND, KEITH, BAKER,

KING, HIVICK, individually and in concert with other members of FTF, assisting Customs' agents Lue Jackson, Larry Harrell, Dante Orate, C.W. Moore, Cynthia Mandujan, Daniel Ramirez, searched the Rasmusson home on Leo Collins with a warrant supported by an affidavit that contained completely false, misleading, information designed to deceive the magistrate into issuing a search warrant based on bogus facts in violation of Plaintiffs' Fourth Amendment clearly established right to be free from unreasonable searches and seizures and in violation of Plaintiffs right to due process and equal protection protected by the Fifth Amendment and the Fourteenth Amendment and the Defendants, individually and in concert, engaged in a cover up of their conspiratorial acts from on or about 1990 to the present. All the acts and conduct of the Defendants made subject of the complaint was objective unreasonable.

(448) Between March, 1993 and September, 1993, Defendants FROST, WILCZEWSKI, MILLS, HOLLAND, KEITH, BAKER, ACOSTA and KING, individually and in concert with the FTF, or other agents assisting, seized and searched Plaintiff Deborah Rasmusson's trash cabana attached to her home on Leo Collins without a warrant and without probable cause in violation of Plaintiffs' Fourth Amendment clearly established right to be free from unreasonable searches and seizures and in violation of Plaintiffs right to due process and equal protection protected by the Fifth Amendment and the Fourteenth Amendment, and the Defendants, individually and in concert, engaged in a cover up of their conspiratorial acts from on or about 1987 to the present. All the acts and conduct of the Defendants made subject of the complaint was objectively unreasonable.

COUNT IV
FOURTH CAUSE OF ACTION

TORTIOUS INTERFERENCE WITH RASMARK'S CURRENT AND PROSPECTIVE BUSINESS CONTRACTS AND/OR BUSINESS RELATIONSHIP WITH STATE NATIONAL BANK, TEXAS COMMERCE BANK AND FORD MOTOR COMPANY AND

COVER UP OF THEIR CONSPIRATORIAL ACTS

(449) For their FOURTH CAUSE OF ACTION against FROST, LAPPE, REAY, WILCZEWSKI, SCHROEDER, KING, BROWN, HIVICK, AND MARTINEZ, Defendants individually and in concert with other FTF members and non members, Plaintiffs state:

(450) By this reference, Plaintiffs hereby incorporate the overt acts specified in paragraphs 1 through 396 as the factual basis for Plaintiffs' fourth cause of action. Plaintiffs further incorporate their first, second, and third causes of action as though fully set forth herein.

(451) All of the incidents and overt acts complained of in Paragraphs 1 through 101 above were committed by Defendants individually and/or in concert acting under color of federal law and/or color of state law without probable cause. The Defendants violated Plaintiffs' rights protected by the United States Constitution and other federal law.

(452) The aforesaid actions of FROST, LAPPE, REAY, WILCZEWSKI, SCHROEDER, KING, BROWN, HIVICK, and MARTINEZ constitute tortious interference with RASMARK's prospective contracts, contract negations, business relationship with State National Bank, Texas Commerce Bank, and Ford Motor Company, invasion of Plaintiffs' privacy, abuse of process all in violation of the law of the State of Texas which this Court may adjudicate as pendant to the first, second, third and fourth causes of action. WEISE, HALLETT, AND HENSLEY failed to supervise, failed to train, failed to discipline, failed to promulgate constitutional policies and procedures and they acquiesced, approved the harassment strategy that consisted of repeated slander against the Plaintiffs resulting in termination of contractual and employment relationships, and rewarded and promoted the agents for their bad acts carried out against Plaintiffs where said acts were contrary to clearly established law.

(453) As a proximate result of the foregoing objectively unreasonable actions and conduct, Plaintiffs suffered loss of property,

huge financial losses, and Plaintiffs suffered and continues to suffer great humiliation, embarrassment and physical and mental suffering and duress, as well as loss of reputation in and among their business associates friends, family. The Defendants are jointly and severally liable for the foregoing damages to the Plaintiffs, and the Defendants, individually and in concert, engaged in a cover up of their conspiratorial acts from on or about 1987 to the present.

COUNT V
FIFTH CAUSE OF ACTION

AGAINST CITY OF EL PASO, EL PASO POLICE DEPARTMENT AND CHIEF LEACH FOR FAILURE TO SUPERVISE AND COVER UP OF THEIR CONSPIRATORIAL ACTS

(454) Plaintiffs' fifth cause of action is brought against the City of El Paso, LEACH, SALAS AND HOLLAND, individually and in concert, pursuant to 42 U.S.C. § 1983 for violation of Plaintiffs' constitutional rights by State of Texas law enforcement officers acting under color of state law.

(455) By this reference, Plaintiffs hereby incorporate Paragraphs **1 through 396** inclusively as though fully set forth in this fifth cause of action. Plaintiffs further incorporate by reference Plaintiff's first, second, third, and fourth causes of action as if fully set forth herein.

(456) All of the incidents and allegations complained of in **Paragraphs 1 through 396** above were committed by Defendants individually and in concert, acting under color of state law without probable cause. The Defendants violated Plaintiffs' rights protected by the First, Fourth, Fifth, and Fourteenth Amendments to freely associate, to be free from unreasonable searches and seizures, right to due process, equal protection, and right to privacy.

(457) SALAS and HOLLAND acting as agents and on behalf

of the City of El Paso ("CITY") within the scope of their employment.

(458) SALAS AND HOLLAND, individually and in concert with other members and non members of the FTF, wrongfully carried out searches, seizures against Plaintiffs and because the CITY has tolerated and permitted a pattern of illegal actions against Plaintiffs and it has failed to maintain a proper system for reviewing , correcting police officer misconduct, such pattern of illegal actions became customs and usage or policy of the CITY. This resulted in the CITY encouraging and inducing SALAS and HOLLAND to believe that they can violate the constitutional rights of citizens such as plaintiffs with impunity.

(459) The failure of the Mayor of the CITY and the Chief LEACH to adequately train, supervise, discipline or in any other way control the behavior of SALAS AND HOLLAND in the exercise of their police functions and to enforce the laws of the State of Texas and the United States and the regulations of the El Paso Police Department and CITY ordinances is evidence of reckless disregard for the rights of citizens including plaintiffs and exhibited a lack of that degree of due care which prudent and reasonable individuals would show in executing the duties of Chief of Police and Mayor.

(460) The failure of the Mayor of the CITY and Chief LEACH to train, supervise, discipline or in any other way control SALAS AND HOLLAND in the exercise of their police functions, and their failure to enforce the laws of the State of Texas and the United States, and the regulations of the El Paso Police Department and City ordinances was and is carried out wilfully, wantonly, maliciously and with such reckless disregard for consequences as to display a conscious disregard for the dangers of harm and injury to citizens of the CITY including Plaintiffs.

(462) The injuries sustained by Plaintiffs resulted from the gross negligence of the CITY in employing and continuing to employ without adequate training and supervision, police officers of a violent character, unsuitable temperament, and insensitive disposition to the constitutional rights of persons, including the Plaintiffs.

(463) As a proximate result of the foregoing objectively unreasonable actions and conduct, Plaintiffs suffered loss of property, huge financial losses, and Plaintiffs suffered and continues to suffer great humiliation, embarrassment and physical and mental suffering and duress, as well as loss of reputation in and among their business associates friends, family. The Defendants are jointly and severally liable for the foregoing damages to the Plaintiffs, and the Defendants, individually and in concert, engaged in a cover up of their conspiratorial acts from on or about 1987 to the present.

COUNT VI
SIXTH CAUSE OF ACTION

AGAINST COUNTY OF EL PASO, EL PASO COUNTY SHERIFF'S DEPARTMENT AND SHERIFF SAMANIEGO FAILURE TO SUPERVISE AND COVER UP OF THEIR CONSPIRATORIAL ACTS

(464) Plaintiffs' sixth cause of action is brought against the County of El Paso ("COUNTY"), Sheriff Samaniego, Detective Neil Baker and Detective Jerry Keith, individually and in concert, and in their official capacity, pursuant to 42 U.S.C. § 1983 for violation of Plaintiffs' constitutional rights by State of Texas law enforcement officers acting under color of state law.

(465) By this reference, Plaintiffs hereby incorporate **Paragraphs 1 through 396** inclusively as though fully set forth in this sixth cause of action.

(466) All of the incidents and allegations complained of in **Paragraphs 1 through 396** above were committed by Defendants individually and in concert with other members and non members of the FTF, acting under color of state law without probable cause. The Defendants violated Plaintiffs' First, Fourth, and Fourteenth Amendment rights to free association, to be free from unreasonable searches and seizures, right to due process and equal protection, and right to privacy.

(467) BAKER and KEITH were acting as agents and on behalf of the COUNTY within the scope of their employment.

(468) BAKER and KEITH illegally carried out searches, seizures, pattern of intimidation, HARASSMENT, retaliation against Plaintiffs because the COUNTY has tolerated and permitted a pattern of illegal and unconstitutional actions against Plaintiffs and it has failed to maintain a proper system for reviewing police officer misconduct and such pattern has become customs, usages or policy of the COUNTY. This resulted in the COUNTY encouraging BAKER AND KEITH to believe that they can violate the rights of citizens such as plaintiffs with impunity.

(469) The failure of the COUNTY Commissioners and Sheriff SAMANIEGO to adequately train, supervise, discipline or in any other way control the behavior of the BAKER and KEITH in the exercise of their police functions and to enforce the laws of the State of Texas and the regulations of the COUNTY is evidence of reckless lack of regard for the rights of citizens including plaintiffs and exhibited a lack of that degree of due care which prudent and reasonable individuals would show in the executing of the duties by El Paso County Sheriff.

(470) The failure of the COUNTY Commissioners and Sheriff SAMANIEGO to train, supervise, discipline or in any other way control BAKER and KEITH in the exercise of their police functions, and their failure to enforce the laws of the State of Texas, United States, and the regulations of the El Paso County Sheriff's Department and city and county ordinances was and is carried out wilfully, wantonly, maliciously and with such reckless disregard for consequences as to display a conscious disregard for the dangers of harm and injury to citizens of the COUNTY including Plaintiffs.

(471) The injuries sustained by Plaintiffs resulted from the gross negligence of the COUNTY in employing and continuing to employ without adequate training and supervision, police officers of a violent character, unsuitable temperament, and insensitive disposition to the constitutional rights of persons, including the Plaintiffs.

(472) As a proximate result of the foregoing objectively unreasonable actions and conduct, Plaintiffs suffered loss of property, huge financial losses, and Plaintiffs suffered and continues to suffer great humiliation, embarrassment and physical and mental suffering and duress, as well as loss of reputation in and among their business associates friends, family. The Defendants are jointly and severally liable for the foregoing damages to the Plaintiffs, and the Defendants, individually and in concert, engaged in a cover up of their conspiratorial acts from on or about 1987 to the present.

COUNT VII
SEVENTH CAUSE OF ACTION

USCS'S VIOLATIONS OF PRIVACY ACT, 5 U.S.C. §552a AND COVER UP OF THEIR CONSPIRATORIAL ACTS

(473) For their seventh cause of action, Plaintiffs allege United States Customs Service violated the Plaintiffs' due process, equal protection, and Privacy Act rights as follows:

(474) By this reference, Plaintiffs hereby incorporate the overt acts specified in the foregoing paragraphs 1-396 as the factual basis for Plaintiffs' seventh cause of action as though fully set forth herein.

(475) (1) In violation of **§ 552a(b),** USCS disclosed information from records that were contained in USCS's system of records by means of a communication, or communications, to PHIL ASIALA and FORD MOTOR COMPANY, and family members, friends, business associates, competitors customers, bankers, creditors, and other persons unknown, without a written request by any of the Plaintiffs or without the prior written consent of any of the Plaintiffs resulting in the loss of established, long-term contractual relationships between Ford Motor Company and the Plaintiffs; **see Letter from Department of The Treasury, U.S. Customs Service, dated July 26, 1993, signed by Defendant Michael T. Lappe, (Exhibit 28).**

(476) In violation of **§552a(e)(1),** USCS failed to maintain a

system of records in which it maintains in its records only such information about the Plaintiffs as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or by executive order of the President.

(477) In violation of **§ 552a(e)(3),** USCS failed to inform PHIL ASIALA and FORD MOTOR COMPANY, and family members, friends, business associates, competitors, customers, bankers, creditors, and other persons unknown, upon whom USCS asked to supply information about the Plaintiffs, on the form which it used to collect the information of the following:

a. pursuant to subsection (A), the authority (whether granted by statute, or by executive order of the President) which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary;

b. pursuant to subsection (B), the principal purpose or purposes for which the information is intended to be used;

c. pursuant to subsection (C), the routine uses which may be made of the information, as published pursuant to paragraph (4)(D) of § 552a(e); and,

d. pursuant to subsection (D), the effects on PHIL ASIALA and on FORD MOTOR COMPANY, and family members, friends, business associates, competitors, customers, bankers, creditors, and other persons unknown, if any, of not providing all or any part of the requested information.

(478) In violation of **§ 552a(e)(5),** USCS failed to maintain all records which were used by USCS in making its determination to disclose information about the Plaintiffs with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the Plaintiffs in its determination;

(479) In violation of **§ 552a(e)(6),** USCS failed prior to

disseminating information from its records about the Plaintiffs to PHIL ASIALA and FORD MOTOR COMPANY, and family members, friends, business associates, competitors, customers, bankers, creditors, and other persons unknown, make reasonable efforts to assure that such records were accurate, complete, timely, and relevant for agency purposes.

(480) In violation of **§ 552a(e)(7),** USCS maintained information in its records describing how the Plaintiffs exercised rights to freely associate with persons of their choice as guaranteed by the First Amendment without first obtaining express authority from the Plaintiffs and such information was not pertinent to nor within the scope of an authorized USCS law enforcement activity.

(481) In violation of **§ 552a(e)(9),** USCS failed to establish rules of conduct for MICHAEL T. LAPPE, LARRY FROST, and other persons involved in the design, development, operation, or maintenance of the system of records containing the information about the Plaintiffs, or in maintaining the records, and failed to instruct each such person with respect to such rules and the requirements of this section, including any other rules and procedures adopted pursuant to this section and the penalties for noncompliance.

(482) In violation of **§ 552a(e)(10),** USCS failed to establish appropriate administrative, technical, and physical safeguards to insure the security and confidentiality of information from records pertaining to the Plaintiffs and to protect against any anticipated threats or hazards to their security or integrity which resulted in substantial harm, embarrassment, inconvenience, and unfairness to the Plaintiffs on whom the information was maintained, and the Defendants, individually and in concert, engaged in a cover up of their conspiratorial acts from on or about 1987 to the present.

COUNT VIII
EIGHTH CAUSE OF ACTION

CONSPIRACY TO VIOLATE PLAINTIFFS CONSTITUTIONAL RIGHTS AND COVER UP OF THEIR CONSPIRATORIAL ACTS

(483) For their eighth cause of action against **LENOX, SCHROEDER, WILCZEWSKI, FROST, MILLS, REAY, LAPPE, HENSLEY, HALLETT, WEISE, KING, BROWN, PERKINS, CHAVEZ, AGUIRRE, HIVICK, MARTINEZ, ACOSTA, SALAS, HOLLAND, BAKER, KEITH, individually and in concert each other and other members and non members of USCS and the FTF.**

PLAINTIFFS STATE:

(484) At all times relevant to this lawsuit, **LENOX, SCHROEDER, WILCZEWSKI, FROST, MILLS, REAY, LAPPE, HENSLEY, HALLETT, WEISE, KING, BROWN, PERKINS, CHAVEZ, AGUIRRE, HIVICK, MARTINEZ, AND ACOSTA,** were acting under color of their federal authority, federal laws, statutes, regulations, policies, customs or usages of the USCS, FBI, IRS, AND DEA and they violated Plaintiffs' rights, privileges and immunities secured to Plaintiffs by the First, Fourth and Fifth Amendments to the Constitution of the United States. This cause of action is brought against them pursuant to the Bivens Doctrine.

(485) At all times relevant to this lawsuit, SALAS, HOLLAND, BAKER, AND KEITH were acting under color of the laws, statutes, ordinances, regulations, policies, customs or usages of the State of Texas, County of El Paso, and the City of El Paso and they violated Plaintiffs' rights, privileges and immunities secured to Plaintiffs by the First, Fourth, Fifth or Fourteenth Amendments to the Constitution of the United States. This cause of action is brought against them pursuant to 42 U.S.C. § 1983.

(486) By this reference, Plaintiffs incorporate each and every

allegation and averment contained in Paragraphs 1-396 as though fully set forth in Plaintiffs' first, second, third, fourth, fifth sixth and seventh causes of action.

(487) Defendants LENOX, WILCZEWSKI and SCHROEDER, joined the conspiracy during the period 1987 and 1990. Defendants PERKINS, CHAVEZ, MARTINEZ and AGUIRRE joined the conspiracy during the period 1989 to 1991. Defendants REAY, LAPPE, HENSLEY and HALLETT joined the conspiracy during the period 1990 to 1992. Defendants BROWN, HIVICK, FROST, MILLS, ACOSTA, SALAS, BAKER, HOLLAND, and KEITH joined the conspiracy between 1991 and 1993, and the Defendants, individually and in concert, engaged in a cover up of their conspiratorial acts from on or about 1987 to the present.

DESIGN AND PLAN OF THE CONSPIRACY AND COVER UP OF THEIR CONSPIRATORIAL ACTS

(487) The FTF was funded in the amount of approximately one million dollars for investigation of PORTILLO. RASMARK was made a part of the PORTILLO investigation merely because RASMARK had made a business arraignment with PORTILLO regarding the use of a lear jet for charter services. Customs had been carrying out investigations of RASMARK for several years and came up with no evidence of criminal wrong doing by any one associated with RASMARK. The FTF hatched a new plan to put RASMARK away for good.

(488) The new plan focused on the tactics and strategy designed by LAPPE, REAY, WILCZEWSKI, SCHROEDER, AND FROST, individually and in concert, which was implemented in steps:

PLAN A:

(a) Develop information and evidence of Mark Rasmusson conducting money laundering.

(b) Develop information and evidence of Mark Rasmusson direct involvement in transportation of currency and/or drugs.

(c) Develop direct evidence of Mark Rasmusson involvement with Portillo in currency transfers anywhere in the world.

(d) If a, b, and c failed to produce any evidence then the investigation would resort to plan B.

PLAN B:

(a) The FTF would intimidate and coerce Mark Rasmusson's friends, business associates, customers, employees and implant in their minds the allegation that Mark Rasmusson is a drug dealer, money launderer, and in general a criminal. The FTF initial circle of distribution and communication of disinformation failed to produce the desired result of cutting off Mark Rasmusson's source of business resources.

(b) Having only been partially successful, the FTF resorted to the next phase by overtly providing false, misleading and outright lies to RASMARK's single most important client - The Ford Motor Company. The false, phoney and misinformation provided to The Ford Motor Company Headquarters caused the Ford executive managers to fire Plaintiff Gantkessy and terminate its use of RASMARK as its primary air carrier despite the fact that RASMARK was the cheapest, most reliable and on time air carrier in El Paso.

(c) RASMARK's loss of the Ford Motor Company business resulted in 80% to 90% drop in business income. The FTF went further in providing disinformation to Chrysler Corporation, General Motors and to other air carrier brokers through RASMARK competitors Gail Beech, Chris Hines and others.

(d) Still not having the desired impact of completely cutting off income to RASMARK, the FTF carried out raids on RASMARK aircraft to delay fights of time critical cargo as specified in count III. Finally FTF organized and carried out simultaneous raids on the

RASMARK Office and the Rasmusson's home on Leo Collins. FTF seized and removed all RASMARK business records that were essential to operating RASMARK.

(e) The FTF continued its campaign of harassment, intimidation, and retaliation as specified in Count I par. xxxxx above. The combined efforts finally caused RASMARK to be out of business for a period of time.

(f) Over the ten (10) year period that federal agents have been harassing, intimidating and retaliating against RASMARK and combined with the efforts of the FTF, no evidence of criminal activity was found.

PLAN C:

Plan C called for the FTF to obtain a Undercover ("UC") person that Mark Rasmusson would trust and in whom he had confidence who could and would approach Mark Rasmusson to make an offer that he/she could solve all of the RASMARK financial problems if RASMARK or Mark Rasmusson would engage in transportation of drugs (drugs furnished by FTF) or INITIATE A MONEY LAUNDERING OPERATION DESIGNED by the FTF (money furnished by the FTF). Once an agreement were made BETWEEN Mark Rasmusson and the Undercover operative, and drugs or money were accepted by Mark Rasmusson, he would be immediately arrested and the FTF would seize all of the RASMARK assets and all the FTF partners would split the spoils. The seizure of the RASMARK assets would close the case and WILCZEWSKI, FROST, SCHROEDER AND LAPPE would claim that the asset seizure would pay for the failed million dollar PORTILLO investigation.

(489) By this reference, Plaintiffs incorporate each and every allegation and averment contained in Paragraphs 1-396 as though fully set forth in Plaintiffs' eighth cause of action, and the Defendants, individually and in concert, engaged in a cover up of their conspiratorial acts from on or about 1987 to the present.

COUNT IX
NINTH CAUSE OF ACTION

DEFENDANTS ENGAGED IN A COURSE OF ACTION DESIGNED TO COVER UP THEIR VIOLATIONS OF LAW AND THEIR VIOLATIONS OF PLAINTIFFS' CONSTITUTIONAL RIGHTS

(490) Plaintiffs allege Counts One through Eight as though fully set forth herein, and paragraphs 1-396, all Defendants, federal, state and private persons, individually and in concert, engaged in a cover up of their conspiratorial acts from on or about 1987 to the present.

DAMAGES

(491) All of the Defendants' acts and omissions set out above were the proximate cause of substantial damages to Plaintiffs including severe physical pain and suffering, severe mental pain and suffering, lost income, severe emotional distress, humiliation and embarrassment, and mental anguish and deprivation of constitutional rights.

(492) All of the acts and omissions of Defendants were wanton, malicious, and done in conscious disregard of and with deliberate indifference to the rights and needs of Plaintiffs rendering appropriately the award of punitive damages.

(493) All of the acts and omissions of all Defendants complained of herein were done in conscious disregard of and with deliberate indifference to Plaintiffs' constitutional rights.

WHEREFORE, Plaintiff requests the Court:

a. Enter judgment in behalf of Plaintiffs against the Defendants USCS for actual damages in an amount to be proved at trial pursuant to the Privacy Act, Section 552a(g)(4);

b. Enter judgment in behalf of Plaintiffs against all Defendants, jointly and severally, including but not limited to, in the amount of one hundred twenty million dollars ($120,000,000) compensatory damages;

c. Enter judgment on behalf of Plaintiffs for punitive damages against FROST, WEISE, HALLETT, REAY, LAPPE, WILCZEWSKI, SALAS, HOLLAND, BAKER, KEITH SCHROEDER, MILLS, PERKINS, CHAVEZ, AGUIRRE, LENOX, and ACOSTA, including but not limited to, in the amount of fifty million dollars ($50,000,000) each;

d. Enter judgment on behalf of Plaintiffs for punitive damages against Defendants KING, BROWN, , HIVICK, in the amount of ten million ($10,000,000) each;

e. Enter judgment on behalf of Plaintiffs for punitive damages against LENOX, BAKER, KEITH,HINES, BEACH and Aero Freight, Inc., including but not limited to, in the amount of five million dollars ($5,000,000) each;

f. This relief should be enough to deter Defendants and others from similar violations in the future;

g. Grant Plaintiffs a reasonable attorney's fee as authorized by 42 U.S.C. § 1988 against Defendants, jointly and severally;

h. Grant a trial by jury; and

i. Grant any and all additional relief to which Plaintiffs may appear to be entitled including their costs herein expended, pre-

judgment and post-judgment interest.

SHEPPARD & ASSOCIATES

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Supreme Court, U.S.
FILED

981345 FEB 8 - 1999

OFFICE OF THE CLERK

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

MARK B. RASMUSSON, et. al.,

Petitioners,

v.

LAWRENCE E. FROST, et. al.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

APPENDIX C
Petitioners and Supporting Affidavits

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APPENDIX C

PETITIONERS AND SUPPORTING AFFIDAVITS

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AFFIDAVIT OF MARK B. RASMUSSON

1. I, Mark Rasmusson, state that I am the owner of Rasmark Jet Charter, Inc. located at 6915 Boeing Dr., El Paso, TX 79925. I have been a licensed pilot since 1978.

2. My father, Mr. Marlin B. Rasmusson died on May 1, 1979 and left his estate valued at approximately seven million dollars which was to be divided 40% to me, 40% to my brother Robert Rasmusson, and 20% to Janet Wherry, my half-sister. Before distribution of inheritance, we paid $3.9 million dollars in Death Taxes to the Internal Revenue Service; this amount was paid in cash. The moneys were to be paid 1/3 in 5 years, another 1/3 in 10 years, and the balance 1/3 in 15 years from May 1, 1979. However, my brother Robert died in an accident on July 15, 1981; my father's estate was now divided between me and Janet, 60% and 40%, respectively. Between July 15, 1981 and November 18, 1985, I had received $1,165,853.23 and Janet $205,000.00, and the balance in the estate to be distributed was $657,104.70, (see Appendix D, Vol. 1, Exhibit 1).

3. My mother, Vera Rasmusson, died on August 29, 1980, and her entire estate was willed to me and my brother Robert to be divided equally. In the event of the death of either son, the remaining survivor would inherit the entire estate. My mother's trust paid me 1/3 of the estate on my 25th birthday, April 14, 1980, 1/3 on my 3oth birthday, April 14, 1985, and I received the balance of 1/3 on my 35t' birthday, April 14, 1990. Because of my brother's untimely death, August of 1981, 1 inherited both my mother and my brother's estates both valued at approximately $1,052,230.60, (see Appendix D, Vol. 1, Exhibit 2).

4. My father and mother made their wealth by their own hard work. My father invented the popsicle frozen stick confection machine. He had 47 patents and sold these machines worldwide. He sold the company in 1963 to FMC Corp. He was then an investor, and received royalty income from his patents. He was very dedicated and very honest. He would pay his taxes and never try any tax schemes, like

oil wells, etc., to cheat the government out of tax money. He would never drive I MPH past the speed limit. These are the values with which I grew up. We had more money than we could ever use, but he never tried to impress people with his money. Later, he told me to take "the business where the action is," (he built his business to where he supported about 1,000 employees). So like he did with the POPSICLES, I did with the Air Charter business. This brought me to El Paso, Texas where I moved to do business; I had no family or friends or any other reason for moving to El Paso.

5. I moved my air charter business to El Paso, Texas in 1987 to grow with the NAFTA and maquila industrial growth. We were happy with Ford Motor Company as our main customer and they were at least 80% of our business. All of our competitors were jealous. We traveled to Detroit to meet with FORD officials about the national contract and they were pleased with our excellent service record and competitive rates. FORD was giving us the opportunity to win the national contract. We were very optimistic until SA Frost caused our open doors to close before our very eyes, accusing me and Deborah Rasmusson of being in the drug smuggling and money laundering business. Although we have never engaged in the drug business, individually, jointly or through our company Rasmark, we were defenseless against our very own government accusing us of such crimes. We knew we were innocent and thought that if we kept concentrating on our business that the government would soon realize their mistake. However, matters got worse, as I will explain in more detail below.

6. My mother, Vera Rasmusson, earned her wealth by marrying my father, Marlin Ben". They divided their money before dying. My mother was younger than my dad by 17 years; however, when he died, she gave up and died the next year. My younger brother "Bob" died the following year 1981, he was 24 years old. My whole family was gone in 3 years. I learned a great lesson that life has no guarantees to anyone, and that I needed to be serious about my life and look after the family fortune with my business.

7. I started my company the next year 1982 with all my inheritance. After working 15 years and investing all of my family's

money in this business, I sure am glad SA Frost, the U.S. Customs Service, and other agents, haven't totally ruined my life, and family fortune, and I am able to fight back as best as I can with this lawsuit. I hope no other law-abiding citizen is ever subject to these 'Nazi Tactics" designed to ruin peoples' lives and businesses, at the gain of some promotion and confiscation happy agents, like SA Frost.

8. In 1982 I started Rasmark Air, Inc. located in Reno, NV. In 1983 I formed Rasmark Jet Charter Inc., a Nevada corporation. In 1986 , I relocated to El Paso and incorporated Rasmark jet Charter, Inc. in Texas. I currently own two Lear Jets 24 and three Lear 25's and two Falcon Jets and one Aero Commander. My business is currently valued at approximately 5 million dollars and I have outstanding loans of approximately 2.8 million dollars.

9. The purpose of this affidavit is to document a campaign of harassment, intimidation, and retaliation conducted against me by agents of the U.S. Government, primarily the US Customs Service, and through the federal government task forces, in particularly, under the direction of USCS Special Agent Larry Frost.

10. Two to three years after forming my own air charter company, I did some contract flying for Gail Beech, owner of Aero Freight, an El Paso based air charter freight company; I subcontracted flights for her. I quit subcontracting for her in 1987, due to her slow pay habit and other tactics she used to ruin my business. I discontinued doing business with her when she announced her purchase of her own Lear N251AF (which she still owns today); previously, she owned no aircraft. This made her a direct competitor instead of a broker, as she was in 1986-1987. She was very bitter and tried everything from calling the FAA, Customs, or any other agency to put us out of business; this was her only form of competition, as her service was not winning her any business. I owned the following planes 2 Lear jets and I Cessna 210. My business was primarily directed at the Air Freight market but I also offered passenger charters and air ambulance.

11. Shortly after my arrival in El Paso, my business began to expand rapidly. I was flying regular flights for Ford Motor Co. and

several other regular customers. Much of the business I obtained from Ford had sometimes been flown by Gail Beech who in turn brokered the business to assorted carriers and Aero Freight. Although I was pleased with the way my business was growing, I became concerned that my pilots and planes seemed to be coming under unreasonable scrutiny by US CS officers. On several occasions my pilots, my passengers, and I were treated roughly and forced to disrobe when being inspected by USCS officers. It was not uncommon for us to be delayed more than 2 hours at each crossing. Officers would strip search my clothes, shoes, wallet, and leave me in my underwear, on at least 2 occasions, but I was delayed two or more hours at every crossing.

12. In the beginning, I thought that such searches were routine along the US-Mexico border but I learned that other charter companies were not being searched as frequently and in the same manner as my flights were being searched. While returning my son Mark, Jr. to his mother's custody in Sacramento, California in 1990, we flew to Sacramento in our Lear jet N44CP. After parking the aircraft, I was surrounded by 5 agents. These agents wore blue jeans and flowered shirts (Hawaiian style); they all had shoulder length hair; they surrounded me, I didn't know if they were bad guys or what, and they showed badges stating they were DEA agents. They directed me to the detention facility at the airport along with my son and wife Debra. They questioned us as to what we were doing and where we were going; they asked to searched the aircraft which I allowed. They asked to search my son's "Teddy Bear' which we allowed and the agents then guttered the "Teddy Bear" with their knives while my son (6-7 years old) and I watched. I had no idea they were going to do that. I explained to my son that the agents were "bad guys'. Debra learned to deplore the agents and officers as this type of treatment happened time and time again, and we were honest, hard working people. Whatever USCS put in their computer was certainly red flagging and singling us out wherever we went, international or domestic, with any government agency, police, sheriffs, DEA, FBI, etc.

13. The following are other examples of unreasonable searches. On or about 10-6-88 one of my planes was on the ground at the Brownsville, TX airport preparing to take off on an automotive parts

charter. The pilot in charge, Jerry Burnett, had started one engine and was in the process of starting the second engine. Several armed officers, maybe 25, later identified as US Border Patrol Agents, armed with automatic weapons, shotguns, and pistols, dressed in camouflage gear, surrounded the plane and ordered the pilot and crew to exit the plane immediately. Pilot Burnett could not shut down the engines immediately without creating an extreme fire hazard with the unburned fuel.

14. While Burnett waited one or two minutes to kill the jet engines, an agent threatened him with a shotgun. When Pilot Burnett was able to exit the plane, the agent poked the shotgun into Burnett's stomach. The agent was nervous, shaking badly, and Burnett feared that the agent would discharge the weapon accidently and kill Burnett.

15. The Border Patrol Agent in Charge told Burnett and the crew that the agents were acting under US Customs authority. When the crew members were asked for ID, the co-pilot reached in his back pocket for his ID. When he did so, several of the agents pointed guns at him. The co-pilot was so scared that he defecated in his pants. The agents made a thorough search of the crew and the plane while holding the crew at gunpoint. Finding absolutely nothing, the agents allowed the crew to reboard the plane and return to El Paso. It is further noted that this particular flight had not been outside the US and was not returning from Mexico. The plane was also not able to complete its revenue flight, due to the time delay, (see Appendix C, Exhibit 11).

16. In 1990 or 1991, I made a flight to Vancouver, BC, Canada with my wife at the time, Deborah , and two passengers, Chris Yarber and Felix Podregon. My wife and I left Vancouver on a cruise on the "Star Princess Ship". When Yarber and Podregon returned to my plane, they and my crew were strip searched by Canadian officers. My plane was searched thoroughly but no
contraband of any sort was found. The Canadian officers kept asking, "Where are the drugs?". I feel certain that the search by the Canadians and the rough treatment of my crew and passengers was based upon a USCS 'lookout" placed on my plane. I have attached an affidavit from Chris Yarber,(see Appendix C, Exhibit 19). Also while clearing Canada customs at Vancouver, after returning from Alaska, we were delayed 3

hours. I believe the USCS was behind this unusual delay. While they searched all of our luggage in a separate room from the other passengers, they inspected each and every item one by one asking questions about each item. The delay caused us to miss our limousine that we had reserved. We then went to (BFI) Seattle Airport for U. S. Customs who cleared us and then sent a police car onto the runway to stop our aircraft with the red lights on. We stopped the aircraft and the car then retreated allowing us to finally
depart. We were certainly on some kind of computer 'Red Flag" in Canada and U.S.A.

17. On or about 6-16-93, one of my planes was sent to Douglas, AZ to pick up a load of seat belts from Allied Signal Co. The cargo was consigned to Mark III Industries, Ocala FL. When the plane landed at Love Field, Dallas to refuel, it was surrounded by a USCS helicopter, a USCS. Citation Jet, and a van bearing 8 or 10 armed officers from USCS and the Dallas PD. The agents, with drawn guns, surrounded the plane and ordered the crew to exit the aircraft. The co-pilot, Mr. Bertilsson was ordered to kneel on the tarmac. He was immediately handcuffed and placed in the van. The pilot, Mr. Jackson, was also ordered out of the plane at gunpoint and ordered to kneel on the tarmac with his hands over his head.

18. Mr. Jackson complied with the orders given by the armed agents. He was then ordered to move the plane to the Jet East area, the Fixed Base Operation on the east side of the airport. He moved the plane as ordered. Upon arriving at the designated parking area, Jackson was asked by a female agent to sign a consent search form to allow the agents to search the plane. She told Jackson that if he refused to sign the consent search form, the plane would be held overnight until a search warrant could be obtained the following day. Since the cargo was ""time sensitive" and had to be delivered to
Florida ASAP, Jackson was forced to sign the consent and allow the search.

19. The boxes of seat belts were removed from the plane and a drug dog was used to search both the plane and all the cargo boxes. No contraband of any sort was found on the plane or in the cargo. Mr.

Jackson asked why the plane and cargo had been searched and the agent replied that they, the agents, received information that the plane "needed checking". The agent further stated that Rasmark was on a 'hit list". After searching the plane and cargo, the agents removed the handcuffs from Mr. Bertilsson and he was released. Again, I feel very strongly that this unreasonable search was based upon a 'lookout" placed by USCS in El Paso. Furthermore, the delay caused concern by our customer, and we missed the next already scheduled revenue flight out of Florida due to the time delay. This caused loss of income to RASMARK at each and every delay, (see two handwritten statements of pilot David Jackson, Appendix D, Vol. 11, Exhilbit 33).

20. On many other occasions, I felt that I, my pilots, crew and passengers were subjected to rude, rough, and unprofessional searches by either UCSC officers or from officers of other agencies acting on 'lookout' information furnished by USCS officers, particularly SA Frost. I personally had to refer to the treatment as "SS Nazi tactics".

21. In 1989, I felt that the unreasonable searches by USCS were seriously affecting my business especially the passenger charters. The frequent searches, some conducted at gunpoint, where my pilots were handcuffed, were demoralizing and degrading to my pilots. In the many searches of my planes, pilots, passengers, and cargo, no contraband of any sort was ever found. In some cases, the planes were searched with drug dogs but no trace of any narcotics was ever located because I am not in the drug or money laundering business!

22. Since I was convinced that, for some reason, I had become the object of a USCS "vendetta", I wrote a letter to US Senator Ted Kennedy to plead my case. My letter was forwarded by Senator Kennedy to Senator Bentsen and then to the US Commissioner of Customs. Rather than solving my problem, my letter seemed only to incense USCS officers in El Paso. I soon learned that I and Rasmark had become the object of an active USCS and DEA criminal investigation.

23. My employees and my business competitors were interviewed. One competitor, Gail Beech, owner of Aero Freight, used these interviews to furnish false, misleading, and slanderous information

about me and Rasmark to USCS and later to officials of Ford Motor Co., one of my major customers. Both my residence and my business were under surveillance from time to time. I noticed agents tailing me in my car and eavesdropping at restaurants and placing surveillance at a hotel in 1993, (see Appendix C, Exhibits 22 and 25).

24. In 1990 I was flying occasional passenger charters for Jesus Flores, an El Paso building contractor. Mr. Flores was indicted for drug smuggling in June 1990 as a result of a DEA investigation. Although I had very little personal contact with Mr. Flores, I was also named in the indictment which charged me with aiding and abetting by providing transportation.

24(a). On October 18, 1990 after I was indicted, two IRS agents, Bob Martinez and a dark hair female, came to my office at RASMARK and showed their ID. They proceeded to question me about Jesus Flores. They did not read me my Miranda rights, even though I told them I wanted my lawyer to be present. I felt coerced into answering their questions because they were so persistent: they asked to see all transaction records with Mr. Flores; how Flores arranged his flights; about my relationship with Pete Seaverns and if Pete introduced me to Jesse--which he did not and I told the agents that. I also told the agents that whenever Jesse Flores, or someone on his behalf, called RASMARK to arrange their flights, they talked to RASMARK's dispatchers, not me or Deborah. They wanted copies of Flores invoices which I directed my secretary to make copies of and gave them to the agents. After they continued to ask for more
information, I told them again that I wanted my lawyer present and a subpoena; at which time Agent Martinez said to me, "Don't worry, I'll get you before the Grand Jury where you can be punished for lying." Then they left.

25. I went to trial at El Paso in January 1991. No credible evidence was presented during my trial and the Federal Judge ordered my acquittal. There was no evidence introduced at the trial indicating that I assisted Mr. Flores in any way other than providing Jet Charter passenger service for which he paid me. No evidence was introduced that I ever profited unreasonably or illegally through my business

relationship with Mr. Flores or that I ever knew that he was involved in drug trafficking.

26. After my acquittal in early 1991, I hoped that I could continue to operate my air charter service without any more harassment. Although DEA apparently terminated their investigation of me and Rasmark, USCS initiated an extensive multi-agency task force investigation, and I became one of the targets of that investigation. The USCS investigation was led by USCS Agent Larry Frost and was supported by officers from the El Paso PD, El Paso Sheriff's Office, IRS, INS, and the FBI. I have learned through depositions that a major investigation was conducted by the Task Force, apparently directed at Guillermo Portillo. The investigation of Rasmark was supposedly only one facet of the larger Portillo investigation.

27. Using information obtained from my competitor, Gail Beech, information which Beech herself characterized as 'rumor and hearsay", USCS agents led by Agent Frost began an intense investigation of my activities in mid 1990. Andy Gantkessy, an employee of Ford Motor Co. was targeted as a possible informant to be used in the investigation against me. Agent Frost used NA gestapo Nazi type" tactics against Mr. Gantkessy to try and force him to become an informant for USCS. These tactics included threats made to Mr. Gantkessy, a heart patient and former victim of a stroke, while being interviewed by five or more agents at once. Two intense interviews were conducted with Mr. Gantkessy by USCS and other
federal agents in an effort to force him to 'cooperate" with USCS. When Mr. Gantkessy was told by his lawyer to refuse to talk to USCS, Agent Frost and other USCS officers initiated a campaign to terminate the Rasmark business relationship with Ford and to cause Ford to fire Mr. Gantkessy and deny him his pension after 24 years of employment. They achieved their goals.

28. Agents Frost and Schroeder met with Ford officials on more than one occasion and furnished false and misleading information to Ford about me, Rasmark, and Mr. Gantkessy. Through this false and misleading information, my credibility with Ford was undermined and my business relationship with Ford, previously my largest customer,

was terminated.

29. The information released to Ford by Agents Frost and Schroeder was released directly to Ford officials Tim Pomaville and Phil Asiala, Ford Security officer and Personnel official. In an El Paso meeting on B-18-93, Agent Frost told Pomaville and Asiala the following (See Appendix D, Vol. 11, Exhibits 20-21, Ford memo #FI000294, dated B-18-93):

1. Mr.Gantkessy was deeply involved with me, Deborah, and Rasmark and was accepting money, air transportation, and other forms of 'kick-backs" from Rasmark. This was actually some football tickets to maybe 4 games; some poker chips during a Las Vegas trip, which Andy returned; and, as I recall, Andy won the free trip from a drawing at an Amigos Airsho. Besides Andy could have had the tickets from any carrier he dealt with; this included Emery Air Freight, Burlington Northern, and many others. Andy was hardworking; he started at 5:00 AM and sometimes loaded freight past midnight, to personally see Ford's freight was ""on time'. Fraudulent invoicing and kickback or payoff schemes were an invention of agent Frost. Rasmark Jet was honest and we had a published tariff sheet with Ford. Our service surpassed our competitors, that's why we had the business; of course, all of our competitors were jealous we had Ford's business, especially Gail Beach, (see Appendix D, Vol. 11, Exhibits 22-22C).

2. There were 11 full time, federal agents from other agencies investigating this (the Rasmark) case.

3. The case centered on drug trafficking between Mexico and the US.

4. Andy Gantkessy had become a part of the investigation.

30. Much of the above information furnished by Agent Frost was false or deliberately misleading. My rebuttal is the following.

31. There was never any proof , other than Mr. Gantkessy's admissions made under duress, that he received any money from

Rasmark. Mr. Gantkessy may have accepted air flights from Rasmark but these were not illegal; he always offered to pay the equivalent value of an airline seat, however, I don't recall if this was collected or not. The point is that Debra and I were going anyway on these trips and Andy was no addit onal costs to Rasmark or us personally. Under no circumstances did he demand or take a trip personally, without Debra and I not being with him. It was not only good business but he was a friend as well. Whether Andy violated Ford's policy is not for me to say; however, Ford was aware that RASMARK participated in the Amigo Air Show, along with various other charitable events, with which we gave prizes of a free trip to Las Vegas or other sporting events. We have donated and given these Las Vegas trips to charitable organizations to raffle off for their benefit. We always have a raffle at the Amigo Airsho, like the trip that Andy won at random. Information furnished in the January 1997 depositions of officers involved in the USCS Financial Task Force and a review of all the USCS reports indicate that Gantkessy was never the target of any criminal investigation. Both the interviews conducted with Gantkessy by task force officers in June 1993 were aimed at forcing Gantkessy to become an informant. Although this fact was denied by both Frost and Schroeder, it was confirmed in the deposition of FBI Agent Acosta. No criminal charges were ever filed against Mr. Gantkessy and little or no investigation was ever conducted with that intent. Neither were any charges ever filed against me or Deborah.

32. If any criminal charges, i.e. a 'Kick-back" violation, were contemplated against Mr. Gantkessy, the charges were never properly investigated by USCS or the FBI. Key Ford employees at El Paso who would have known about such a scheme were never interviewed by any Federal Officer. This includes Beverly Enriquez and Manuela Barron.

33. Again Agent Frost lied or misled the Ford officials. The USCS Financial Task Force was conducting a major money laundering investigation which lasted several years. This was established during the depositions of task force members in January 1997. The Rasmark case was only one aspect of the larger case which probably focused on Guillermo Portillo. I don't know how many agents worked full time on my case, but I believe there were more than eleven full time federal

agents assigned to my case at different points in time. I believe Agent Frost lied to the Ford officials to impress them with the seriousness and scope of my case. However, I do believe that USCS had absolutely no problem in gathering up more than 11 agents on numerous occasions for the purpose of harassing, intimidating and retaliating against me and my company.

34. This case(Rasmark) centered on drug trafficking between Mexico and the US. Again Agent Frost lied and misled Mr. Pomaville and Asiala. Testimony from all the government witnesses deposed during January 1997 revealed that the investigation of both the larger case, probably Guillermo Portillo, and my case focused on money laundering and not on drug trafficking. During the many years of the Portillo investigation and the many months when a portion of the investigation focused on Rasmark, no seizure of any narcotics was made which was connected in any way with me or Rasmark. Agent Frost stated during his January 1997 deposition that during the entire course of the USCS task force investigation which focused on me and Rasmark, there was "no factual evidence developed that I was transporting drugs," (See Appendix H, Exhibit 1, Page 121, LI-S.)

35. When questioned in detail in this regard during his January 1997 deposition, Agent Frost testified that the only narcotics seizure related to my case was the seizure of 1/10 gram of marijuana from a vehicle driven by Deborah Rasmusson and some trace amounts of narcotics alleged to have been found in the trash from my former residence. It was noted that the trace amounts of narcotics found in the residential trash were obtained from an El Paso Sanitation Department worker who was never identified by the agents who received the trash. The alleged narcotics were never processed by a crime lab and no fingerprint examinations were conducted. Assuming that the narcotics actually came from my residential trash, several people ,including construction workers remodeling the house at the time, could have been the source for the narcotics. I personally was not living in the home at this time as Debra filed for divorce on March 19, 1993, and I did not live in the home after that.

36. Intense investigations by DEA and the USCS Financial

Task Force over several years failed to reveal any credible evidence that any of my planes or vehicles were ever used to transport any controlled substance or illegal currency or that I was ever involved in any way with drug trafficking. My pilots all testified that I had very rigid rules for flights made into Mexico to assure that no one was allowed to carry any contraband on my planes.

37. That Andy Gantkessy had become a part of the investigation. Again Agent Frost lied or misled the Ford officials. Agents form the Financial Task Force made a very strong effort, through threats and intimidation to recruit Mr. Gantkessy as an informant to be used against me and Rasmark. No criminal action was ever attributed to Mr. Gantkessy and little or no investigation was conducted of which he was a criminal target. The federal agents, who never advised Mr. Gantkessy of his rights during the intense interviews , testified during depositions that Mr. Gantkessy was interviewed as a witness only. Their testimony clearly indicated that their intent in focusing on Mr. Gantkessy was to recruit him as an informant. There is no investigative information which ever involved Mr. Gantkessy in any criminal violation.

38. I believe Agent Frost furnished the false and misleading information to Ford to discredit Mr. Gantkessy and in turn to influence Ford to terminate their business relationship with Rasmark.
The unlawful release of investigative case information by USCS agents to Ford Motor Co. was a major factor in Ford's decision to terminate Mr. Gantkessy, deny him his pension after 24 years of faithful service, and to terminate the Rasmark-Ford business relationship. The Favesa Division, whom Andy worked for, was sold to Lear Seating Corporation in December 1993. Ford's employees stayed and Rasmark was never considered for business as they had the same negative attitude and called us "drug running renegades'. However, note that Gail Beach now has the local ground service contract with Lear Favesa and Lear will not even talk or consider Rasmark for the service, due to all the negative input from USCS and Gail Beach. Gail Beach had bad mouthed Rasmark to Ford before and Ford ignored the rumors and continued to use us; however, only when Gail Beach combined her efforts with the USCS, Frost and other agents, Ford terminated its business relationship

with Rasmark, which continued with Lear Seating when they bought the division from FORD.

39. During the time I was flying for Gail Beach, she was very supportive of my work. When she bought her own Learjet and became a business competitor, Beach became hostile and vindictive. She started spreading rumors about me, and my wife Deborah. Beach also made false statements about me and Rasmark to officials of Ford Motor Co., FAA, and to USCS agents.

40. According to documents obtained from Ford Motor Co. by Mr. Gantkessy and attached to this affidavit(see Appendix Cl, Exhibit 37, Ford confidential memo dated 1-2-92, Ford-number F1000196) Beech advised as follows:

41. Beech stated that Gantkessy and/or Sudomir had a sweet deal with Rasmark. She stated that there were rumors that Gantkessy, and possibly Sudomir, were receiving sexual favors and were possibly on the Rasmark payroll. She claimed that Rasmark violated FAA regulations on a regular basis, damaged Ford freight, delayed flights, used several Lear Jets when one Falcon Jet could carry the same cargo, and charged Ford higher rates than the other air charter carriers. She described me as a poor little rich boy who was a
poor businessman. She also furnished the Ford officials slanderous information about me and my ex-wife Deborah.

42. No Ford employee at El Paso or Detroit ever confirmed any of the above allegations made by Beech. On the contrary, Ford employees, such as Beverly Enriquez and Manuela Barron stated that Rasmark not only provided the most reliable charter service, was available on short notice, but also charged the lowest rates. Ms. Barron stated that in 1989-1990 Ford Favesa used Rasmark because "They were cheaper and most cooperative." Barron stated that as an example on CISA charters to Hermosillo, Mexico, Rasmark charged $3,000.00 per flight and the other carriers including Aero Freight charged $4,000.00 to $4,500.00. It is noted that the notes of the interview with Ms. Barron reflect much more information favorable to Rasmark than is reported in the written summary. Barron's statement that Rasmark was $1,000.00

per flight cheaper than other El Paso charter carriers was not included in the typed statement. See Appendix Dl, Exhibit 38, Ford memo F1000413).

43. Beverly Enriquez, a Ford Favesa employee who handled cargo shipments including air charters, stated in an affidavit that there was never any indication that Rasmark double invoiced or over billed. She stated that Rasmark's freight rates were always competitive with other air carriers, including Aero Freight, (See Appendix C, Exhibit 16, affidavit of Beverly Enriquez).

44. Beach also furnished much of the same false information to USCS Agents Frost and Mills in an interview conducted on 3-9-93, (See Appendix G, Exhibit 25, USCS report number 066 dated 3-22- 93). Beach made many of the same slanderous, false allegations which she also made to the Ford officials. These included allegations about me, my ex-wife Deborah, Andy Gantkessy, and Rasmark. Although Beech claimed under oath that she told the agents that most of her information was based upon "rumor and hearsay" , the agents used the information as though it were truth. I believe that the false and misleading information which Beach furnished to Ford and USCS was deliberately furnished by Beach in an effort to damage my business relationship with Ford
Motor Co. I had previously been in contact with Ford officials in Detroit and felt that Rasmark was about to be awarded a multi- million dollar National contract with Ford valued at 31 million dollars per year. The false information provided to Ford and USCS by Beach caused irreparable damage to my personal reputation and that of Rasmark causing me to lose any opportunity to secure the Ford contract.

45. As proof of Beach's unreliability she is quoted in a Ford memo dated 9-21-93, Ford #1000410-11, page 2, para 4,(See Appendix DI, Exhibit 39). "Joe (Sudomir) was a tough customer, demanded that everything be done properly, and was never known to accept any form of gratuities." In a confidential Ford memo dated 1-2-92 (see Appendix DI, Exhibit 37,Ford #FI000196- #FI000202, top of #FI000197). Beach stated that 'rumors suggested that Gantkessy and possibly Sudomir are receiving sexual favors and are on the Rasmark payroll." In the 3-9-93

interview with USCS Agents Frost and Mills,(see Appendix G, Exhibit 24), Beach stated, "The Rasmussons were engaged in a "kick-back" scheme with Sudomir and are currently engaged in such a scheme with Gantkessy." Beach stated that , ""Deborah was paying Sudomir approximately $1,000.00 per trip which Sudomir brokered through Rasmark for Ford Favesa."

46. The above statements allegedly made by Beach to Ford and USCS are in direct conflict and seriously reflect on the credibility of all the information furnished by Beach to both Ford and USCS. In fact, Agent Frost, knowing that the information furnished by Beach was only "rumor and hearsay', used some of Beach's information in a sworn affidavit given to obtain a search warrant for my home and business, (See Appendix G, Exhibits 3A, Para. 67 and 3E, Para. 68, affidavits of SA Frost dated 11-19-93).

47. Beach also made the following allegations during the 3-9-93 interview with USCS agents, (see Appendix G, Exhibit 24):

1. Numerous slanderous attacks on my character and personal life relating to my meeting and marrying my ex-wife, Deborah.

2. George Arnold used my Cessna 210 airplane to smugg le and transport marijuana. I never authorized or allowed this, George Arnold simply stole the airplane from me, which 1, myself, reported to the U.S. Customs.

3. Rasmark was involved in a 'kick-back" scheme with Joe Sudomir and Andy Gantkessy which involved $1,000.00 per trip pay offs to Sudomir, which I absolutely deny.

4. Andy Gantkessy was sexually compromised by Deborah Rasmusson and was also accepting 'kick-backs' from Rasmark. To my knowledge, Andy is a heart patient and happily married for over 30 years; there is absolutely no truth to this allegation.

5. I kept large amounts of money in banks in the Cayman Islands which is false; I have never had a bank account in the Cayman

Island.

6. Alleged that I made flights for 'illegal purposes' using a co-pilot named Huysman. She failed to further identify these 'illegal flights". Art Huysman was a Lear copilot and later captain, legally and properly checked out in accordance with the FAA regulations.

7. Alleged that Rasmark paid pilots $100.00 per violation of each FAA regulation which is false.

8. Alleged that Rasmark was being allowed to "float" checks for as much as $50,000.00 by State National Bank in El Paso which is false.

48. I categorically deny all the above allegations made by Beach. During the hundreds and perhaps thousands of investigative man hours of investigation conducted by agents of the federal government prior to my trial and up to the present, none of the allegations made by Beach have been proven.

49. I believe that Beech's statements to Ford and USCS were made deliberately to discredit me and Rasmark and to eliminate Rasmark as a business competitor , particularly with Ford . Beech's actions were motivated by greed. Once I was no longer under exclusive contract to her company, I became a competitor and a threat. Beech lost business with Ford and she the opportunity provided by USCS task forces to join forces with them to slander me with Ford in an effort to ruin me personally and disrupt my business with Ford.

50. Regarding the actions of Agent Frost, I believe that he engaged in a deliberate effort to ruin my business and to destroy me financially. Although I have been denied access to the information regarding USCS 'lookouts' placed on me and my airplanes and vehicles, I believe that USCS records will reflect that Frost kept "lookouts" in place months after they should have been cleared.

51. Agent Frost constantly exaggerated and misstated the facts of the investigation of which I was the target. Mr. William Cole, a Nevada Attorney for my ex-wife, Lori Nelson, advised as follows in

an affidavit dated 7-10-92 . (See Appendix D, Vol. 11, Exhibit 19).

52. Agent Frost advised Mr. Cole that ""the Rasmussons were the subjects of an ongoing investigation by Federal authorities relating to criminal charges which had been previously dismissed during a trial because a witness failed to appear and testify." Again Agent Frost lied.

53. Agent Frost further advised Mr. Cole that Deborah Rasmusson had come to Frost's office 'high on controlled substances and had admitted that she was addicted to controlled substances and had been for many years." Deborah was only in Agent Frost's office on one occasion, that being 5-23-92 when Frost and other USCS agents seized a box of Rasmark business records from Deborah. On that occasion, while attempting to persuade Deborah to sign a consent to search form, Frost allowed another USCS agent to purchase beer and furnish it to Deborah while she was being interviewed for several hours in the USCS office.

54. Agent Frost used some of the same information obtained from Deborah during the extended interview on 5-23-92 for his affidavit for search warrant dated 11-19-93, (see Appendix G, Exhibits 3A, Para. 35-44 and 3E, Para. 35-45). The information was used even though , according to Frost, Deborah was high on some controlled substance at the time. Deborah allegedly told Agent Frost that "Mark Rasmusson ships approximately 1,000 lbs. Of US currency out of the U.S. twice a week on behalf of his criminal associates". The fact that Agent Frost would use such a ridiculous statement obtained from someone he described as 'high on a controlled substance", indicates that Agent Frost has no regard for the truth.

55. Agent Frost used additional false and misleading information in his 11-19-93 affidavits for search warrant. Some of these untruths and distortions are:

56. Page 2, para 4 [see para 8]

> "The portion of this investigation which related to Mark Rasmusson and Rasmark was predicated on facts which indicated that Mark and Debra Rasmusson had provided transportation of controlled substances, currency, and people in their aircraft in furtherance of the controlled substance conspiracy carried out by the Jesus Flores organization."

57. I was never accused by DEA of transporting any controlled substance. There has never been any factual evidence developed by DEA, USCS, the FBI or any other law enforcement agency that any of my planes or vehicles were ever used to transport any controlled substance. Agent Frost finally admitted in his January 1997 deposition that no evidence was ever developed that I ever transported controlled substances. (See Appendix E, Exhibit 1, Page 34, L12-18).

58. Agent Frost stated he reviewed all reports of DEA and the trial transcripts which related to my trial. During his deposition in January 1997 Agent Frost testified that he never contacted the DEA case agents who handled my case, special Agents Lenox and Perkins. It was also obvious that he never reviewed all the trial transcripts from my trial as he stated under oath in his affidavits for search warrant in November of 1993.

59. Agent Frost stated in page 5, para 2, that Jerry Burnett, a Rasmark pilot, was quoted in a DEA-6 report as having stated that he, Burnett, and Mark and Debbie Rasmusson concluded that "Flores was in the illegal drug business" and that Burnett had several conversations with me and Debbie in which Debbie and I told Burnett that we knew that Flores was in the drug business, (see Appendix E, Exhibit 13).

60. Mr. Burnett denied that he ever made such statements. At my trial, Mr. Burnett, a witness for the Government, testified under oath that I never remarked to him, Burnett, that Mr. Flores was involved in any illegal activities, (See Appendix F, Vol. 11, Exhibit 48, Page 870, L24-25 and Page 871, LI-6, Criminal Trial Transcript). Mr. Burnett also

testified that I never told him that I knew that Mr. Flores was allegedly violating the law. (See Appendix F, Vol. 11, page 884, LIB-25 and Page 885, LI-3 of the Criminal Trial Transcript). No effort was made by the AUSA handling the prosecution to impeach the testimony of Mr. Burnett.

61. If Agent Frost reviewed the trial transcripts as he stated under oath, he would have known that the statements attributed to Mr. Burnett were not true. Nevertheless, he used this false and misleading information and swore under oath that it was true. Agent Frost acknowledges that Burnett denied the above statements regarding my knowledge of Mr. Flores' criminal activities. However, the fact that he used the false information in an affidavit indicates that Agent Frost was determined to characterize me as a person involved with narcotics traffickers.

62. Agent Frost further alleges that I have committed violations of IRS and that I am guilty of tax evasion. On 5-27-92 Agent Frost opened a box of my business records obtained by a federal search warrant. Agent Frost stated in his affidavit of 11-19-93
that "The contents of the box upon analysis indicated that the Rasmussons are engaged in tax evasion.'(see Appendix G, Exhibits 3A and 3B, Page 10, Para. 44).

63. IRS Agent Fonda Hivick, a tax expert CPA, testified in her deposition that the records in the box were normal business records and there was no proof of any tax evasion. Her testimony directly contradicts the testimony of Agent Frost. Although Agent Frost claims that the records were 'analyzed", his testimony under oath revealed that there was only a cursory examination made of the records and he was unable to identify the person who allegedly "analyzed' the records. Another conclusion made by Agent Frost based upon false , unfounded information, (see Appendix B, Exhibit 1, Page 72, L14-20 and Exhibit 4, Page 11, L13-24 and Page 69, L3-21).

64. My personal and business tax returns,(Rasmark Jet Charter, Inc.) have been subject to close scrutiny by IRS since the late 1980s. IRS did a detailed audit of Rasmark for 1989-1990. The audit

was completed in April 1992 and was a 'no change" audit, indicating that there were no irregularities of any sort with me or my company. (See Appendix D, Exhibit 34, IRS audit results). This IRS audit thoroughly refutes the several allegations made by Agent Frost that I or Rasmark ever engaged in any illegal financial activity. It is noted that the IRS agents conducting the audit had access to all the grand jury material obtained by investigators from the various agencies who investigated me and Rasmark since the mid 1980s.

65. Agent Frost further alleges in the 11-19-93 affidavit that an FBI informant stated that I was involved in money laundering with Jesus Flores through buying aircraft parts. The many months of intense investigation by the USCS Financial Task Force and the IRS tax audit revealed absolutely no evidence to verify any of the allegations made by the FBI informant.

66. The FBI informant also alleged that I received $500,000.00 Page 17 of 28 in drug proceeds from Mr. Flores in 1989-1990. Likewise, this was never verified by any factual evidence.
Such a large amount of cash would be extremely difficult to 'hide" in a business such as Rasmark. The IRS "no change" audit of Rasmark was conducted for the years 1989-1990 when I allegedly received the $500,000.00 From Mr. Flores.

67. Another FBI informant alleged that he/she saw U.S. currency and a white powder substance in a suitcase in my ex-wife, Deborah's, bedroom in December 1991. No action was taken by the FBI, DEA, USCS, EPPD, or any other law enforcement agency, to verify the information or to seize the suspected drugs. Using uncorroborated information in an affidavit seems unprofessional and in this case it was malicious and vindictive.

68. USCS Agent Eric Mills testified during his deposition that he was in charge of a surveillance of my business on 9-16-92. Surveillance agents allegedly saw a vehicle bearing
Arizona license plates HSR-995 arrive at the parking lot in front of the building where my business was located. Two males were in the vehicle. The vehicle was registered to Hector Barrera, a suspect in a

drug smuggling case. Agent Frost makes the assumption in his 11-19-93 affidavit that one of the occupants of the vehicle was Mr. Barrera and that Mr. Barrera entered my business. Agent Mills was unable to name the agent who allegedly observed the activity and stated that there was no written surveillance records available which would identify that officer.

69. It is noted that the entrance to the building where my business was located at that time was also the entrance for Julie's Flight Service and an aircraft parts business. All three companies shared a single entry door. The same door was also used to access an aircraft repair and maintenance area and was frequently used by the public to enter the hangar area. Tests conducted by two private investigators , Mr. Hank Webb, a retired FBI Agent, and Mr. Edward Wagner, a retired IRS Agent- Supervisor, revealed that unless the observer is standing very close to the door, it is not possible to determine whether a person entering the building enters any particular office. To make such a determination would require that the observer also enter the building. Another distortion by Agent Frost, (see Appendix D, Vol. 11, Exhibits 32-32H).

70. On 11-10-92 my ex-wife , Deborah, and a former Rasmark employee, Blanca Avelar were returning to El Paso from Juarez. They were stopped at the Port of Entry, Ysleta and searched. A switchblade knife and 1/10 gram of marijuana were found in the vehicle. The vehicle was seized and both my wife and Ms. Avelar were arrested by El Paso Police Department officers at the request of USCS agents. The vehicle was later released about 4 months later and the charges against Deborah were dismissed, (see Appendix E), Vol. 11, Exhibits 24-24J). At the time when Customs gave the vehicle back, they tried to get Debra to sign a "Hold Harmless and Indemnification Agreement for Release of Seized Property" which she refused, (see Appendix Dl, Exhibit 36.

71. During the several hour detention of Deborah and Ms. Avelar, Agent Frost was summoned to the POE. He attempted to interview Deborah and Ms. Avelar and was generally abusive to both of them. Although both ladies were already under arrest, Agent Frost never

advised them of their "Miranda rights". They were both subjected to strip searches which were embarrassing and degrading. A former USCS Supervisor Mark Ryden has stated in an affidavit that during his many years with USCS he never saw anyone arrested for possession of 1/10 gram of marijuana or a switchblade knife, (See Appendix C, Exhibit 5, affidavit of Mark Riden, dated 3-3-97). He stated that the normal USCS policy for switchblade knives seized at the POEs is to break the blade of the knife, throw it in the trash, and allow the bearer to enter the U.S. It is obvious to me that Agent Frost used the occasion at the POE to orchestrate the arrest of Deborah in another attempt to convince her to become a witness against me. It is to be noted that the issue of the .1 gram of marijuana only came up in Frost's affidavits; Deborah was never told they found marijuana in her car.

72. Agent Frost also uses other misleading information in the 11-19-93 affidavit, (see Appendix G, Exhibits 3A, Page 12, Para. 57 and 3B, Page 13, Para. 58) . He uses a 7-13-92 EPPD report in which EPPD officer Clifford Gongaware states that he observed a truck bearing Chihuahua license plates waiting to enter the industrial area of the El Paso Airport at about 1:25AM. The truck eventually entered and drove to the Rasmark area. The officer "surveilled" the truck and determined that boxes were being transferred from the truck to a Rasmark plane.

73. There is some implication that this activity was somehow related to criminal activity. Beverly Enriquez, and Andy Gantkessy, both employed by Ford at that time, have stated that it was not unusual to load Rasmark planes between midnight and 6:00 AM. The trucks bearing the cargo were usually from Juarez plants and were delivering auto parts for expedite delivery to Ford assembly plants. There was nothing illegal or unusual about the activity observed by Officer Gongaware. I believe that Agent Frost used the information from Officer Gongaware to indicate that the loading was being done in a surreptitious manner. This was absolutely not true. Another distortion by Agent Frost.

74. A second EPPD report by Officer Andrew DeAngelo, dated 7-24- 92 states that Officer DeAngelo observed a Rasmark plane

being loaded with cargo at about 3:00 AM while two men armed with rifles stood guard. The area in question is within the confines of the El Paso Airport security area. If the officer made such an observation, he should have taken immediate action to confront the armed individuals and resolve the situation. Officer DeAngelo did not notify his supervisor, call for 'back-up, or take any other action.

75. Officer DeAngelo was not ever interviewed about the incident until six months after the incident. There have never been any rifles kept at Rasmark and the drivers from Juarez could not cross the border with any firearms. There is absolutely no reason why any armed guards would have been needed at Rasmark. Another unfounded allegation made by Agent Frost in an attempt to fabricate evidence, (see Appendix G, Exhibit 3A, Para. 63 and 3B, Page 13, Para. 64).

76. On page 14 of Agent Frost's affidavit, he uses some of the information from the Gail Beech interview, which Beech herself described as 'rumor and hearsay". Beech alleged that "The Rasmussons were engaged in a 'kick-back" scheme with Joe Sudomir and are currently engaged in such a scheme with Andy Gantkessy. It is noted that Beech made conflicting statements to Ford about Joe Sudomir. In one interview she described Sudomir as a person who demanded that everything be done properly and was never known to accept gratuities. In another Ford interview she alleged that Sudomir was accepting sexual favors from Rasmark and was receiving cash payments for Ford flights booked through Rasmark, (see Appendix Dl, Exhibit 37, F1000197-198).

77. The conflicting statements made by Beech strongly discredit her credibility. Since I was her major business competitor, especially with Ford, she stood to gain a great deal if I went out of business. Nevertheless, Agent Frost used the statements made by Beech as though they were reliable.

78. In the same affidavit Agent Frost includes information from Chris Hines, a former Rasmark employee who was fired. Hines alleged that Rasmark billed Ford for flights which did not occur. I feel certain that Agent Frost furnished that same , false information to Ford

officials. Ford employees at El Paso, Beverly Enriquez and Manuela Barron, were responsible for monitoring the Rasmark invoices. Both have advised that there was never any confirmed incident of over billing or double billing by Rasmark. Ford had an invoice control system which would have made double billing or billing for non existent flights virtually impossible. Ford conducted an extensive audit of the Favesa office and the Rasmark accounts during the Gantkessy investigation and no irregularities were found. None of the allegations made by Mr. Hines were ever corroborated by factual evidence, (see Appendix C, Exhibit 16, affidavit of Beverly Enriquez).

79. On page 18 of Agent Frost's affidavit of 11-19-93, Agent Frost states that El Paso Sheriff's Investigator Jerry Keith observed a white pick-up bearing Texas license depart from the Rasmark business office. The vehicle was registered to Gildardo Rosales, a suspect in a controlled substance trafficking investigation. As previously stated, it is not possible to determine which of the three businesses located within the building a person might have visited without the viewer actually entering the building. No factual proof was offered to establish that Mr. Rosales visited the Rasmark office.

80. Agent Frost states on page 25 of the same affidavit as follows: "I believe that based on the statements of Debra Rasmusson and the association of the Rasmussons with known controlled substance traffickers such as Jesus Flores and Hector Barrera, there is probable cause to believe that the Rasmussons have in the past and are utilizing Rasmark Jet Charter to facilitate the transportation and laundering of the proceeds in the trafficking in controlled substances."Again Agent Frost makes an unfounded, baseless assumption, not supported by any evidence.

81. There has been no credible evidence produced that I ever met Hector Barrera other than the surveillance on 9-16-92 when a vehicle registered to Mr. Barrera was observed in the parking lot which my business shared with two other businesses. My business relationship with Mr. Jesus Flores was thoroughly scrutinized during my trial in June 1991 and I was exonerated by the presiding federal judge. There was never any proof that I socialized with Mr. Flores or did anything other

than provide air charter services to him in the normal course of my business.

82. During the January 1997 deposition of Agent Frost, he was asked whether any evidence of my involvement in drug trafficking was ever developed during the lengthy investigation of me and Rasmark. He replied that no evidence was developed by the USCS Task Force that I was transporting drugs, (see Appendix B, Exhibit 1, Pg 121, line 5, Frost deposition).

83. Agent Frost was asked whether the USCS Task Force investigation developed sufficient evidence to confirm my involvement in money laundering. His reply was , "No, Ma'am. I don't believe so," (see Appendix 3, Pg 121 , line 16, Frost deposition).

84. Agent Frost was asked whether the financial task force developed sufficient evidence to prosecute me or any of the other plaintiffs. Agent Frost replied "Yes". He stated that the evidence had been presented to AUSA Ken Barnes but no prosecution was ever initiated. Agent Frost alleged that I was guilty of under reporting my income. IRS did not share this opinion. IRS agents monitored and reviewed my tax returns for several years and found absolutely nothing irregular or improper.

85. Agent Frost made statements in USCS documents which were unfounded and not based upon fact. One such statement made by Agent Frost was that the box of records seized from Deborah Rasmusson on 5-23-92 contained evidence that "upon analysis indicated that the Rasmussons are engaged in tax evasion." Agent Frost was unable to identify the person who performed the "analysis" on the business records in the box. As previously stated in this affidavit, IRS Agent Fonda Hivick, an accountant, testified that the box contained nothing which was evidence of any crime, including tax evasion. Agent Frost tried to explain the false statement as "poor sen-tex on my part, poor writing on my part," (see Appendix H, Exhibit 1, Page 125, L19-23, Frost deposition, January 1997). The truth is, Agent Frost simply lied under oath in his affidavit of 11-19-93.

86. Agent Frost was asked during his January 1997 deposition what evidence, independent
corroboration, did he find that indicated that indicated that I was ever participating in money laundering activities.

87. He replied (see Appendix H, Exhibit 1, Page 47, L8-13 of his January 1997 deposition). "So far as the money laundering activities through his association with Guillermo Portillo. We seized one of the aircraft, which we, which belonged to maybe Mr. Portillo, maybe Mr. Rasmusson, depending upon how you read the registration."

88. Mr. Portillo had a business arrangement with Rasmark wherein Rasmark provided hangar space, service, and pilots for his airplane, a Lear Jet with tail number N7GP. Mr. Portillo became delinquent in his payments and I filed a lien against the plane on 11-1-90 for unpaid bills. He satisfied the lien on 3-8-91 an I released the lien, (Appendix D, Volume 1, Exhibits 11-110 and Appendix D, Volume 11, Exhibit IIE). All these transactions were public record which Agent Frost apparently checked and ignored, (see Appendix H, Exhibit 1, Page 78, L12-13).

89. Obviously Agent Frost's definition of evidence does not match that of the US Attorney's office. Hearsay and information from anonymous informants is not evidence. Distorted statements obtained from witnesses who are biased are not evidence. Statements obtained under duress, poorly transcribed, and not subject to review for accuracy by the person being interviewed are not evidence. Much of the information which Agent Frost probably considered evidence would never have survived the rules and scrutiny of any court of law. If there had been any reasonable amount of reliable evidence indicating that I was involved in violation of any federal statute, I feel certain that I would have been indicted.

90. Agent Frost makes one last effort near the end of his deposition to justify the very expensive , lengthy, multi-agency investigation of me and Rasmark, (see Appendix H, Exhibit 1, Page 133, L15-25, Frost deposition, January 1997). "When I say we established no narcotic charges, not to the standards of the federal courts. We took

controlled substances out of the trash at that residence. Ms. Rasmusson has had concealed weapons taken from her. Mrs. Rasmusson was arrested for solicitation of capital murder. There are criminal charges that were substantiated by this investigation. They have not been prosecuted to date.' Agent Frost's standards for evidence not only do not meet the standards for federal court, they do not meet the standards for any court.

91. None of the above alleged violations mentioned above by Agent Frost are federal violations. All the above alleged violations were investigated by the El Paso Police Department and had absolutely nothing to do with the USCS Financial Task Force. It is also noted that all of the alleged violations mentioned by Agent Frost, no prosecutions were obtained and all the cases have been dismissed. Agent Frost implies that the Task Force had some success in their investigation of me and Rasmark. The truth is that the entire investigation in addition to being vindictive towards me, my ex-wife Deborah, and Andy Gantkessy, the total effort was a waste of taxpayers' money.

92. To elaborate on the hundreds of incidents which occurred between the mid 1980s and the present would be far too voluminous for anyone to read. The simple truth is that I personally suffered, and my business virtually ruined by the actions of Agent Frost and the other members of the USCS Financial task Force.

93. I married Deborah in September of 1987 and moved my air charter service to El Paso in 1987. By that time we owned two Lear Jets, free and clear, had another Lear financed and leased a fourth. My business was booming. I was on the verge of landing a multi-million dollar, National contract with Ford Motor Co in 1992.

94. When I was indicted on federal charges in September 1990, I had to devote all my efforts and finances to supporting my defense. I was acquitted of all the charges in June 1991 but my defense cost me over $50,000.00 in legal fees and several hundred thousand dollars in lost revenue from my business. During the months of preparation for my trial, Deborah and I were subjected to extreme pressures, both personally and financially. During this same period

Deborah started drinking more alcohol. We were both embarrassed and humiliated by the false accusations made against us.

95. After my acquittal, I thought that we could get our lives back together and try to rebuild our business. We soon learned that a new group of federal and local officers, we now know to be the USCS Financial Task Force, had focused on us and our business. We now know that USCS had a parallel investigation going as early as 1989, or before according to the events happening to us in 1987-1988, conducted by USCS SA John Peterson until the USCS Financial Task Force took over in March of 1992, (see Appendix E, Exhibit 1, Page 18, L19-25 and Page 19, LI-10).

96. In late 1991 or early 1992, we received a death threat on our business phone. We reported the call to the El Paso Police Department and Officer George Salas appeared at our Rasmark offices to investigate the call. Officer Salas told Deborah that he felt that she was in danger and that we, mostly Deborah, should have some protection since I was flying regularly and was not home many nights.

97. We hired Officer Salas to provide personal protection for Deborah when I was out of town flying. Officer Salas, himself a married man, soon initiated an affair with my wife. They had sex at our home and also at the home of Officer Salas, on the carpet in his own bedroom. Deborah was extremely vulnerable at the time and did not offer much resistance to officer Salas. He even took her to a party attended by many of his police officer friends.

98. In May 1992, officer Salas helped orchestrate a series of events through which Deborah was convinced that someone, allegedly me, was trying to kill her. Deborah was concerned about a box of Rasmark business records which were found on the floor in the Rasmark office. She called Officer Salas and he came to the office. Officer Salas convinced Deborah that she was in grave danger and convinced her to meet with Agent Frost. Officer Salas phoned Agent Frost and arranged to transport Deborah, and her son Ian Maye, and the box of records to a designated location to meet Agent Frost and several other USCS agents who then escorted them to the USCS office.

99. Once Deborah arrived at the USCS office, she was interviewed for several hours during which time one of the USCS furnished her a six-pack of beer which she drank. She was repeatedly asked to sign a waiver for consent search of the Rasmark office and a form to forfeit Rasmark assets to USCS. When she refused to sign these documents, the 'interview" was finally terminated and she was allowed to leave with the box of records. She and Ian had to walk as the agents refused to give her a ride when she wouldn't sign the USCS' consent to search and confiscate assets form.

100. When Deborah left the building, she was followed by Agent Frost and several other USCS agents. Agent Frost confronted Deborah at a nearby convenience store and forcibly took the box of Rasmark business records from her against her will. Although Agent Frost stated under oath that the box contained evidence of tax evasion on my part, this statement was denied by Agent Fonda Hivick, an IRS Agent, Accountant. Agent Hivick testified that the box contained no more than normal business records and some personal papers.

101. During this episode, Deborah realized that Officer Salas was an informant for the USCS Task Force and that he had been furnishing information to Agent Frost on a regular basis while being paid by us to protect her. Deborah felt betrayed and her drinking and drug use began to escalate.

102. Although I had great hopes about the Ford contract, Agent Frost and Gail Beach, my main El Paso competitor, initiated a N'. smear campaign' directed at me and Andy Gantkessy, a Ford employee. Beach made slanderous, false statements about both of us to Ford officials and to Agent Frost. Agent Frost used some of these statements and some false statements obtained from Mr. Gantkessy under extreme duress to undermine my credibility with Ford. Agent Frost held personal meetings with Ford Security officer Phil Asiala and Ford's personnel official, Jim Pomaville. In an El Paso meeting, Agent Frost revealed detailed information about the USCS ongoing investigation. Most of the information furnished to Ford by Agent Frost has since been proven to be completely unfounded, even by Agent Frost's own admission. Agent Frost was told by Beach that her information was based on rumor and

hearsay but he used the information anyway, (see Appendix E, Exhibit 12, Page 41, L7-9). Agent Frost consistently embellished and exaggerated the scope and seriousness of the investigation to impress the Ford officials.

103. The 'smear campaign' orchestrated by Agent Frost culminated in a letter to Ford from USCS El Paso SAC Michael Lappe , dated 7-26-93. 1 have been advised by Mr. Hank Webb, a retired FBI Agent and Mr. Edward Wagner, a retired IRS Agent-Supervisor, that in all their entire law enforcement careers,
they never witnessed such a brazen violation of federal laws and regulations relating to unlawful disclosure of investigative case information to civilian, non-law enforcement personnel. Mr. Mark Ryden, a retired USCS Agent-Supervisor, has also stated that USCS policy prohibits any disclosure of information such as SAC Lappe released to Ford. It is noted that Agent Frost admitted that he drafted the letter to Ford, (see Appendix G, Exhibit 3C, Para. 11).

104. As a result of the campaign by Agent Frost, Mr. Gantkessy was fired and denied his pension. My business relationship with Ford was terminated. The loss of the business with Ford has cost me many millions of dollars in lost revenue.

105. Agent Frost also crippled my business for several months by seizing all my business records in November 1993. Sixty boxes of business records were taken from the Rasmark offices and the residence on Leo Collins Drive, El Paso, Texas, by members of the USCS Task Force under a federal search warrant. These records included all the FAA mandated maintenance records, engine logs, pilot flight logs, and other records required by federal law to fly charter flights. My business was totally shut down without these records.

106. Although there is no indication that any of these records were ever analyzed or even viewed by any member of the USCS Task Force, they were held without cause from November 1993 to May of 1995, approximately 18 months, and some we still haven't received to this day. Mr. Larry Vaughn, Rasmark Aircraft Maintenance Supervisor, contacted Agent Frost many times and urged him to release the records,

(See Appendix C, Exhibit 27, Larry Vaughn's Affidavit). Rasmark spent hundreds of hours and thousands of dollars attempting to recreate some of the aircraft maintenance records so that the company could resume flying. Even FAA officials urged USCS Agent Frost to return the maintenance records long before they were returned. During the last several weeks Agent Frost held the records, he used them as 'bait" for Larry Vaughn in an attempt to recruit him as an informant for USCS.

107. Because Debra and I could not complete our divorce without these records, we filed a Motion For Return of Property, which Judge Reusch signed, in order for us to get back personal and Rasmark records from the USCS. When some of the records were finally returned, it was determined that backup documentation on many invoices was missing and approximately 50,000.00 thousand dollars were lost in unpaid invoices alone. The records were in a total disarray, some to the point of being useless.

108. In a last ditch effort to clear my name and seek some justice for the years of harassment, intimidation, and retaliation led by USCS agents, especially Larry Frost, I finally filed this civil suit. The expenses in supporting this suit have been a drain on my financial resources and I have been distracted from the day-to-day operation of my business, Rasmark Jet Charter, Inc. However, I believe that any reasonable person who reads the detailed accounts of the many outrageous acts committed against me, Deborah, and Mr. Gantkessy by the USCS agents, especially, Agent Frost, and other members of the USCS Task Force, will be convinced that their actions were not only outrageous but also willful, intentional, malicious, vindictive, unprofessional, unwarranted, and in many cases illegal.

109. I was hoping that filing this lawsuit would deter these USCS employees from harassing, intimidating and retaliating against me; however, a recent experience in November of 1996 has reminded me that USCS believes it is above the law, (see my handwritten statement to my attorney, Appendix DI, Exhibit 40).

110. In operating my aircraft company for 15 years commercially, I have never experienced scrutiny and examination as

much as recently with the FAA. On Monday March 24, 1997, I received a notice from an anonymous source that the FAA was planning a big nonroutine inspection. The anonymous source stated that he didn't think this was 'fair ball' and decided to tip us off. Our source did not want to be revealed for fear of retaliation.

111. Just like we were told, we received a call from the FAA late Friday afternoon, March 28, 1997 announcing that they would be in El Paso for an inspection starting Monday, March 31, 1997. On Monday, March 31, 1997, B-10 FAA inspectors arrived. These inspectors were not the regular inspectors assigned to RASMARK that we were accustomed to dealing with. They have been intensely inspecting and scrutinizing our operation and all records pertaining to the operation. At this time, they are still inspecting and expect to continue through Thursday, April 10, 1997. This amounts to over 600 man-hours of FAA manpower. I believe this is excessive for an operation like RASMARK where we are only operating 3 Lears, I Falcon, 1 Turbo Commander at the present. My employee, Steve Gomez, stated to me this is excessive even for MESA Airlines, who operates 100 aircraft. Steve worked at MESA Airlines before RASMARK.

112. During the inspection some of the inspectors asked if we would voluntarily surrender our operating certificate. We absolutely refused to voluntarily surrender, and are waiting for the investigation to conclude.

113. While finishing my 1995 tax return which was on extension to October 15, 1995, Albert Apodoca, C.P.A., was handling an audit for 720 F.E.T. tax due from RASMARK. The IRS agent asked Albert Apodoca about my 1040 Income Tax Return, which Albert replied was ready to file. The F.E.T. agent demanded Albert Apodoca file it with him. To this day the Return has not been filed with the agency, and this agent will not credit the tax forward as is stated on the Return. Instead, this agent is demanding a complete audit of tax year 1995. I feel that this agent has it out for me, and I was not allowed to mail in my Return like a normal citizen would be allowed to do. This continual auditing by the IRS further confirms my feelings that I am

continually being, harassed by different agencies because of this ongoing conspiracy against RASMARK and myself.

114. I only hope that there is still justice in this country in which we live.

SIGNED this the 8th day, April 1997.

/s/ Mark B. Rasmusson

STATE OF TEXAS
COUNTY OF EL PASO

Personally appeared before me, and being duly sworn, declared that he signed this affidavit, and further stated that he read the affidavit and the statements contained therein are true and correct to the best of my knowledge.

Sworn to and subscribed before me this 8th day of April, 1997.

/s/ Dolores Diaz Olague
Notary Public
My commission expires 5-5-99

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

MARK B. RASMUSSON, ET AL.,	§	
Plaintiffs	§	
	§	
v.	§	CIVIL ACTION:
	§	EP-95-CA-475-F
	§	
LAWRENCE E. FROST, ET AL.,	§	
Defendants.	§	

AFFIDAVIT OF MARK B. RASMUSSON

STATE OF COLORADO
EAGLE COUNTY

On this day personally appeared MARK B. RASMUSSON who after being duly sworn stated upon his oath and belief as follows:

1. "My name is MARK B. RASMUSSON, I am over the age of 21 years, and I am competent in all ways to make this oath and affidavit. I have personal knowledge of the facts and circumstances set forth below.

2. "1 have read the Application and Affidavit for Search Warrant that was prepared by Agent Lawrence E. Frost on November 19, 1993, for my residence located at 11157 Leo Collins Drive, El Paso, Texas. The Frost Affidavit states that on numerous occasions in 1993 that certain documents were alleged to be found in my trash. On the dates March 18, 1993, March 22, 1993, April 5, 1993, April 8, 1993 and April 19, 1993, 1 lived in the house located at 11157 Leo Collins.

3. "The documents and papers that Detectives Neil Baker and Jerry Keith allege that they retrieved from my trash were for the

most part important documents that I would never put in the trash.

4. Neil Baker and/or Jerry Keith allege they obtained the following documents and papers from my trash on the dates listed below:

(a) March 18, 1993: airport landing receipt in the name of Rasmark Jet Charter;

(b) March 22, 1993: computer generated balance sheet reflecting four invoices from Rasmark Jet Charter which invoice four flights on behalf of Ford Motor Company.

(c) April 5, 1993: BANAMEX deposit receipt in the amount of $15,216,055.00 pesos. The receipt lists an account number of 738165-3 and dated July 23, 1992 in the name of Mark B. Rasmusson.

(d) April 8, 1993:

(i) Two pages from a personal phone book with business numbers. These numbers are all aviation related.

(ii) An internal telephone or intercom listing for all phones inside the house at 11157 Leo Collins.

(iii) A yellow sheet of with notation King Air Albq. friday, names Juan & Tim", Westin Paso Del Norte Motel and other information.

(iv) American Express receipts

e) April 19, 1993:

(i) Blank pad from Rasmark Jet Charter;

(ii) Delivery service note with name Don Johnson & Cindy;

(iii) Letter and price list from Phillips 66 for aviation

fuel and locations through out the United States;

(iv) Letter from Sonitrol alarm company;

(v) permit f or Anna Rasmusson to travel by air into Mexico.

5. All of the above listed documents were never put into the trash by me or anyone I know. For the most part these documents are essential to accounting and running my business.

6. During the period from "April 8, 1993 through June 3, 1993, 1 was in the Cayman islands. I know that I was not at my residence and I did not place anything in the my residence trash during this period.

Signed on this 8th day of July, 1996.

/s/ Mark Rasmusson
Affiant

Subscribed and sworn to before me, the undersigned authority, On this 8th day of July, 1996.

/s/ Judy K. Janicek
Notary Public in and for
State of Colorado
My Commission Expires: 10/2/97

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

MARK B. RASMUSSON RASMARK JET CHARTER, INC.,	§ §	
PLAINTIFFS	§	CIVIL ACTION:
	§	EP-95-CA-475-F
v.	§	
LAWRENCE E. FROST, ET AL.,	§	
DEFENDANTS.	§	

AFFIDAVIT OF MARK B. RASMUSSON

STATE OF TEXAS
EL PASO COUNTY

On this day personally appeared MARK B. RASMUSSON who after being duly sworn stated upon his oath and belief as follows:

1. "My name is MARK B. RASMUSSON, I am over the age of 21 years, and I am competent in all ways to make this oath and affidavit. I have personal knowledge of the facts and circumstances set forth below.

2. "1 have read the Application and Affidavit for Search Warrant that was prepared by Agent Lawrence E. Frost on November 19, 2993, for my residence located at 11157 Lea Collins Drive, El Paso, Texas and the search warrant Application and Affidavit for my office located at 6805 Boeing. The Frost Affidavit states that on numerous occasions in 1993 that certain documents were alleged to be found in my trash.

3. "The documents and papers that James Holland, Neil Baker,

Jerry Keith, Fred Schroeder, and Larry Brown allege they retrieved from my trash were for the most part important documents that I would never put in the trash.

4. "At all timer during 1993, an enclosure next to my garage- - a trash cabana- - was used to house the trash containers for my house located at 11157 Leo Collins. The trash collection personnel were required to walk up my driveway from the road to retrieve the trash from my trash cabana, then move the trash containers to the street and dump the trash into the El Paso Sanitation truck and walk back up the drive way to the trash cabana and place the trash containers in the cabana. From time to time to the trash collectors left the containers at the curb and I had to move then back to the cabana.

5. "All documents identified by Agent Frost in his affidavit for the search of my house were never put into the trash by me. For the most part these documents are essential to accounting and running my business. In addition, I kept these documents in my office files until Customs took all my office files on November 22, 1993.

6. "1 did not give James Holland, Fred Schroeder, Larry Brown, Neil Baker Jerry Keith or anyone else permission to enter upon my property and seize my trash or enter my home or office and remove records

7. "On pages 12-13 of the Leo Collins affidavit, Agent Frost alleges that officer Gongaware observed a large yellow truck with Chihuahua plates blocking the airport entrance and he investigated. Large yellow trucks with Chihuahua plates entering the airport and proceeding to the Rasmark ramp area was a common occurrence where the auto parts on the trucks [were] made in Mexico and had to transported f rom Mexico to the Airport for shipment to the auto manufacturing plant.

8. "On page 13-14 of the Leo Collins affidavit, Agent Frost states that on March 1, 1993, Officer DeAngelo stated that he observed the loading of a jet at Rasmark with guards armed with a rifle, posted towards the main airport area and another guard with a rifle posted to

watch the south towards Boeing St. Agent Frost states that this event took place on July 24, 1992.

9. "The Month of July in 1992 was one of our busy times where we were flying multiple flights per day for Ford Motor Company. There was never any guards or security personnel or anyone posted with a rifle on the Rasmark loading area or any where near the Rasmark offices. Had any of my employees seen a person with a rifle any where close to our hanger, aircraft, or on our loading area, the police would have been immediately called to investigate.

SIGNED ON THIS 16th DAY OF JULY, 1996

/s/ MARK RASMUSSON, AFFIANT

SUBSCRIBED AND SWORN TO BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS 16th DAY OF JULY, 1996.

/s/ DOLORES DIAZ OLAGUE
NOTARY PUBLIC IN AND FOR THE
STATE OF TEXAS
MY COMMISSION EXPIRE: 05/05/99

AFFIDAVIT OF DEBORAH L. RASMUSSON

1. I Deborah Rasmusson, state that I reside at 11157 Leo Collins, El Paso, TX. I was formerly married to Mark Rasmusson. We were married in 1987 and our divorced finalized in June of 1996. The purpose of this affidavit is to document the conduct of Officer George Salas of the El Paso Police Department, Agent Larry Frost, USCS, and other members of the USCS Financial Task Force,(FTF). My ex-husband, Mark Rasmusson, and I were the victims of a campaign of harassment and intimidation conducted from the late 1980s to the present. The unwarranted and illegal actions of Agent Frost and his associates wreaked havoc in our personal lives, and seriously crippled our business, Rasmark Jet Charter, Inc.(RASMARK), which at one time was a growing, multi-million dollar per year business.

2. After our marriage, Mark and I moved to El Paso. In 1986 Mark was doing air charter subcontract flying for Aero freight, an El Paso based charter company owned by Gail Beach. The air charter business was "booming" in El Paso and our business expanded rapidly. Mark did most of the flying and I managed the office, handled sales, accounts receivable, and personnel matters.

3. When RASMARK stop subcontracting with Aero Freight, Gail Beach became very vindictive towards both Mark and me. She was very upset over the business which our company, Rasmark, gained from Ford. One of her major accounts had been Ford-Favesa. I remember Ford asked for bids from Aero Freight, Air Transport and RASMARK; RASMARK was the only one that responded with a bid, providing all of the information that Ford requested. After that, RASMARK's business with Ford increased. The Ford assembly plants used air charter flights on a regular basis to supply last minute parts needed for assembly line production. Between 1987 and 1993, RASMARK's main competitors who actually had full-time offices in El Paso were Aero Freight and Air Transport.

4. Although our company was growing rapidly, Mark and I became concerned during 1987 that Rasmark flights were being

frequently subjected to rough and unwarranted searches and inspections by USCS and other federal officers. Our pilots, crew members, and sometimes passengers were sometimes handcuffed and searched at gunpoint, even when the flights were domestic in nature and had never left the U.S. No trace of any contraband was ever found on any of our planes. I remember John Farrah came to me in approximately 1987 with a business card from Thomas Klien of USCS pilot or agent; he told John that Mark and I were involved in ilelgal activities and that he wanted him (John) to provide information to USCS; he told John that he had better cooperate.

5. In 1989 Mark wrote a letter to Senator Ted Kennedy to complain about the harassment being conducted against Rasmark. We hoped that the letter would result in our flights being handled in a more professional manner and that the unwarranted harassment would cease. On the contrary, the letter seemed only to incense the USCS personnel. The unwarranted searches and the unreasonable conduct continued.

6. In addition to flying air freight, Rasmark also provided passenger charters and ambulance flights, although our major business was air freight. We started doing some charter flights for Jesus Flores, an El Paso building contractor, in February of 1990. We hardly knew Mr. Flores; he preferred talking to our Spanish-speaking dispatcher, so I assumed he didn't speak English. We never had any social events with Mr. Flores nor did we ever run into him at any social events. Mr. Flores was not a regular customer and he usually paid in cash. Because of the uncertain banking conditions in Mexico, it is not uncommon for wealthy Mexican businessmen to use cash rather that checks. Although both Mark and I met Mr. Flores, neither of us socialized with him and we did not see him often. Mr. Flores never became one of our "major" accounts and we had no reason to believe that he was anything other than a wealthy businessman.

7. Because of our business relationship with Vista Remodeling Company, being owned by Mr. Flores, Mark became involved in an investigation being conducted by DEA regarding Mr. Flores and some associates. As a result of that investigation, Mark was indicted on federal drug related charges along with Mr. Flores and

others in September 1990. During that investigation, both Mark and I were interviewed by DEA agents. Our office records were subpoenaed and our employees and our accountants were interviewed at length.

8. Mark's indictment on the federal charges put a serious strain on Mark and me, both financially and personally. We had to commit a major portion of our financial resources to Mark's defense. This left us with less money to support our business, Rasmark. There was also a drain of our own personal time and energy in preparing Mark's defense.

9. Mark was acquitted during the trial in June 1991 when the presiding Federal Judge ordered the acquittal for lack of evidence. Both Mark and I hoped that we could put the trauma of the trial behind us and return to building our air charter business.

10. Shortly after Mark's acquittal, we thought the DEA had discontinued their investigation, however, we have learned since the taking of LENNOX's deposition in January of 1997, that during 1990, while USCS was a member of the DEA task force, USCS also had a continuing investigation against Mark and me, which was taken over by a USCS Financial Task Force with Agent Larry Frost as the lead case agent. USCS SA John Peterson was the former case agent. Our former employees, current employees, business associates, business competitors, family and friends were interviewed by agents from the USCS FTF. I have suspected something was going on; I felt lots of time I was being followed and people staring at me; and, I had quite a few problems with my telephone that led me to believe my conversations were being listened to.

11. During the period from summer 1991 until this civil suit was filed in federal court in El Paso in Novmeber of 1995 a series of outrageous and I believe illegal acts were committed against me, my ex-husband, Mark Rasmusson, and Mr. Andy Gantkessy, a former employee of Ford Motor Company. Although there were many such acts committed, in the interest of brevity, I will address only a few of the most flagrant ones in this affidavit.

12. As a result of the actions of George Salas, Agent Frost and other members of the USCS FTF, the Rasmark business was seriously crippled and almost forced into bankruptcy, and Mr. Gantkessy was fired by Ford after 24 years of honorable employment. He also lost his pension earned through those 24 years. And I experienced extreme mental anguish, which continues to the present day.

13. George Salas entered the picture in January or February of 1992, when an unknown caller left a message stating on the RASMARK telephone answering system something to the effect "the next time I see you mother f----r I'm going to kill you -- I'm going to rip your f-----g heart out. Mark and I were very concerned and scared. Mark contacted the El Paso Police Department who dispatched two officers to our business, RASMARK Jet Charter Service, Inc., which was then located at Cutter Air on Convair. One of the officers dispatched was George Salas, I do not recall the other officer's name. Salas asked a lot of questions including whether Mark was involved in any illegal activity where people would be after him to kill him. We both responded no. Salas took the tape of the threat with him. We told Salas we both suspected Joe Sudomir, an employee of Ford. I had written a letter outlining sexual harassment complaints to Ford regarding Sudomir's behavior and comments. We also had a bitter dispute with him over approximately 2.2 million dollars in unpaid RASMARK invoices, which resulted in Sudomir being relocated to a Ford plant in Michigan.

14. Shortly after that I began to see people peeking in the window when I was alone and Mark was out of town. After several of these incidents I contacted Salas to tell him what was happening. He had previously given us his work number. Salas told me his supervisor had reviewed the tape and thought that I needed protection. Salas then offered to make his services as a bodyguard available to me. Salas told me his fee was $20.00 per hour. Salas then gave me his pager number, work number, and his home telephone number in the event I needed to contact him. Salas made me feel he was very concerned about my safety. Salas contacted me several times to check on me. During that time, Mark was gone a lot on contract flights.

15. Several days after our first meeting at RASMARK, Salas came to our residence on Leo Collins unannounced. I was in the hot tub and my son Ian let him into our house, and then told me about it. I got out of the hot tub and had a towel wrapped around me and went into my bedroom. Salas, who was in uniform, was there in my bedroom and asked if he could dry me off. Salas proceeded to seduce me at a vulnerable time in my life. I had an affair with Salas that lasted until sometime in May of 1992. During that period, we had sex approximately six times, including at Salas's residence. Salas told me it would be a very big mistake if I ever told anyone about our affair; however, when we were around his friends and fellow police officers, they all seemed to know all about it. Salas told me that if I ever got stopped by the police just tell them I'm George Salas special friend and that they would not cite me for any violations. My husband Mark was never aware of the affair until about eight months after our divorce when I finally revealed this information to our attorney. Salas told me he was married and had children when we first met.

16. Shortly after he came to my house, Salas appeared at the office of RASMARK and told me he had been transferred to the airport and would be able to see a lot more of me. After that he came by the RASMARK offices almost daily, he also started coming over to my residence 3-4 times a week. It was during these contacts that Salas started questioning me about the RASMARK business and my personal relationship with Mark. I did discuss my marital problems with Salas. Salas also implied that Mark was plotting to kill me and was involved in illegal acts.

17. On one occasion Salas was dropped off at my residence in uniform. While there he received a call on his pager. Salas told me his supervisor did not know he was at my residence, and he would get in trouble if his supervisor found out. Salas asked if he could borrow my car (Mercedes) and go to a convenience store and call his supervisor from there. I agreed and loaned him my car keys to the Mercedes, which included my house keys, master bedroom keys, office keys, filing cabinet keys, safe key, and keys for our Grand Marquis. It was after this occasion that I started to notice unusual happenings in both my home and office. I noticed both my residence and office were rifled and left

in a mess. In addition, articles of clothing that did not belong to any of our family members were found in our house. I prided myself on my organization and neatness. I soon became very suspicious of everyone including Mark. In his deposition, Salas implied I gave him a house key. I never gave Salas any keys except when I loan him my Mercedes.

18. Blanca Avelar, my secretary and friend, went out with George Salas and his partner several times. I do not recall his partner's name, but believe it may be "Manny." On one occasion Salas telephoned and invited me to El Presidente on Viscount to have Marguerites. When I asked if Blanca could go he replied yes and that his partner would also be there. When we arrived there were eight to twelve other police officers present. We stayed there approximately one and one-half hours drinking and then left in my Mercedes. We drove out to the desert where Salas and I got out of the vehicle and went for a walk. Salas's partner went with Blanca and I recall she became very upset because he kept grabbing at her. We then drove back to O'Henrys on Hawkins where we split up and I went with Salas. I believe Blanca went home.

19. Salas also telephoned me on a weekday morning between 9:00 a.m. and 10:00 a.m. He told me his wife was at work and invited me to his residence. When I arrived we had sex on the floor of his upstairs master bedroom. Salas and his family had just returned from a trip to Disney Land when that incident occurred. Salas's residence is a two story home on the east side. The master bedroom is upstairs. I also recall the house had very light colored carpeting, an off white, and there were a lot of pictures on the walls of his family, his wedding, and some of him in uniform both military and police. Salas also took me out to his back yard where he had a swimming pool. As you enter the front door of his residence I recall his living room was on the left side and his kitchen area to the right.

20. During our affair, Salas attempted to convince me that Mark was associated with some really bad people who were involved in drugs and money laundering. I told Salas that Mark was straight, but he insisted I should be afraid of Mark. I began to wonder if what Salas know what was going on. I was very upset and disappointed that Mark

might have been behind the peeking in the windows, the messed up files at RASMARK, and the disarray in my closets and drawers at home. I was very confused and vulnerable at that time. I kept confronting Mark about these things and although he protested that he knew nothing about them, I didn't believe him at the time, even though I never saw Mark do anything that could be connected to any criminal activity. Needless to say, my complaining put a great strain on our marriage, in fact, Mark went to his attorney and file for a divorce before I did in March of 1993, which he later dropped.

21. However during our affair Salas continued to tell me that Mark or some of his criminal associates were out to get me. I believed that George Salas really cared for me and was concerned for my safety. For a while, I actually felt safer with George Salas then I did with Mark. Every time I would see Salas, he would throw in little remarks about Mark like; "where is he, how you know what he is doing, who is he with, are you sure, how you know for sure that's where he is..." I would tell Salas that I know because I have an invoice for the trip that I'm going to bill the customer; yet Salas persisted in his comments against Mark.

22. In May of 1992, on a Saturday morning, my son and I went to the offices of RASMARK and arrived sometime between 10:00 a.m. and 12:00 p.m. When we arrived I noticed a file cabinet open, and some RASMARK records in a box. Mark and his son had previously left for Mexico. I was concerned that someone had broken into our business and could still be in one of our offices. I then telephoned George Salas. He arrived in approximately twenty minutes after I called. When he first arrived, Salas told me to get my gun, (in fact, at the first meeting with Salas at our Rasmark office, it was Salas who told Mark and me that we should buy a gun and for me to keep it in the office. I was concerned about keeping a gun in my place of business. Salas told me to do it anyway whether it was legal or not; he said that he has his wife and mother to carry a gun). He also drew his gun and proceeded to check the RASMARK offices.

23. After Salas completed his search of the offices, I told him I wanted to file a police report. I also showed him the box of records.

Salas then told me he knew who I needed to talk to. He also told me to take the records with me and we got in his car. He had me to hunch down in the front seat and my son Ian to hunch down in the back seat. Salas took my son and I to the Sunwest Bank where he parked and told me to take my pistol out of my purse. He led me to believe my son and I were in great danger. Salas left us in the car and went to a Circle K to make a telephone call. Within minutes four or five cars pulled up, and positioned themselves on each side, and on the front and back of Salas's vehicle. We were then taken to the United States Customs Office at 9400 Viscount, and when we got there Salas asked me for my gun. When I got out of the car at the USCS office parking lot there were approximately ten to twelve agents with their guns drawn.

24. The agents escorted Ian and I upstairs to the second floor and Salas carried the box of records. Upstairs, Salas placed the box of records on a table and introduced me to Larry Frost. I was in a state of shock by this time. Frost said "I bet you're really wondering what's going on about now." Frost told me that Mark was plotting to kill me. Frost then told Ian to meet his "new best friend," pointing to an agent Mills, who took Ian out of the office. Frost then offered me a beer and gave me a six pack which I accepted and subsequently finished drinking the entire six pack. After finishing the six pack I remember I felt pretty intoxicated. Frost told me that he was aware that I had complained to the police about people peeking in my windows. Frost was constantly smoking cigarettes until finally I asked for one; he told me he was surprised that I asked for a cigarette since he knew that I didn't smoke. I asked Frost how did he know that, and he said, "we know everything about you." Frost also told me Salas was working for him in an undercover capacity and was a plant to protect me from Mark. I became very upset at Salas and Frost had him to leave the room. I then asked Frost if the mirrors were one way and if so who was observing. Frost told me the agents behind the mirror were there to protect me from Mark. Frost told me he knew what Mark was involved in, but needed me to fill in the details. Frost also told me I was going to lose everything, my house and the company -- RASMARK. Frost stated they weren't after Mark and me, but after the bigger fish like Sib Abraham, Richard Esper, and Judge Pena. I told him Mark was not involved in any illegal activity.

25. After hours of telling me that I can have a new life, get a new name in their witness protection program, that they would buy me a house, put me and my son through college and Frost said, "we'll give you a good chunk of change, nothing like you're used to but it will be good." Frost kept telling me a lot of stuff was going on, that they knew it all and just needed for me to fill in the details. I told Frost that I would answer any questions he had about me, Mark and our company because we had nothing to hide. Frost said "no, I need to put you in a room for 3 weeks and pick your brains". I remember specifically telling him that he was on the wrong track and that I know the things he's talking about were not going on. I kept telling Frost the whole reason why I called Salas was because somebody had tampered with the files in our office and put certain documents in the box; our business operate under strict FAA regulations, therefore, I wanted to report this to EPPD just in case important records turn up missing; however, Frost wasn't interested in looking at the records in the box even though I offered it to him several times.

26. However, as soon as I said I would answer their questions, Frost brought in a form for me to sign. The form said, "I, Deborah Rasmusson (written in) sign everything that I own to the U.S. Government in exchange for protection through the Witness Protection Program. I assign all of my personal assets as well as the assets of Rasmark Jet Charter, Inc." As soon as he came in with that form, he asked me who was dispatching, he said "David" and I said yes; Frost told me to call David and tell him that the people in the office were federal agents. Right about that time I became extremely frightened and said I wanted to see my son. Someone brought Ian in and I showed him the paper and he said "Mom don't sign it". Frost or one of the other agents said "Who in the fuck are you, her 14 year old attorney?" Some agents then twisted my son's arm behind his back and took him out of the room. Frost told me he was giving me one last chance and they would place me in the witness protection program. I told him I would not sign the papers, and demanded to see my son. I also told him I wanted to leave. After I refused to sign over the RASMARK assets and sign the consent to search the offices of RASMARK their attitude toward me changed instantly. The agents started talking among themselves, ignoring me. Frost left the room and came back with

Wilczewski (who earlier they had introduced to me as the District Director; I recognized him at his deposition in January of 1997). When Wilczewski came in the room I still had my feet on an old coffee table; he said to Frost in front of me "tell that fucking bitch to get her fucking feet off the table or he'll get them off for me." I didn't move or acknowledge what I heard; I was in shock and frightened. Frost then said to me "he's not joking, he'll really do it." The agents became both physically and verbally abusive, pushing my feet off a coffee table. I asked agent Frost if I had been recorded and Frost said "no." I realized that I had been used and set-up by Salas and the government to get to Mark and our company. I felt devastated and humiliated by Salas, someone I thought could be trusted and really cared for me.

27. I demanded to leave with my son and the box of records. Frost and the other agents, including Salas, all started looking at each other, saying "this never happened here, we never talked to her, alright, agree..." And they were all looking at each other nodding approval as each agent walked passed us near the exit to either an elevator or stairs; and ,that's when I pulled the fire alarm. I was really scared and thought they were going to do something to me or my son, and I wanted proof that we had been there. By that time there were still about 8 agents still there. Frost grabbed me by the arm and would not let me leave, after I told him I wanted to leave. It took another hour and 40 minutes before Frost escorted me outside the building. It took about 40 minutes for them to turn off the fire alarm--they were all trying to figure out how to turn it off without the Fire Department coming to the building. While Frost was holding me, he said that they weren't going to let me go because they were going to file charges against me for turning on the fire alarm. Everyone was walking around turning off lights; Frost had me by the arm and I kept telling him I wanted to leave but he would not release me and Frost was telling each agent he passed to remember that this never happened. They had already taken Ian out earlier when I showed Ian the paper; I didn't know where he was or what was happening to him.

28. Frost did not let me leave until the fire alarm had been resolved. When Frost escorted me out the building, Frost carried the box and when we got outside Frost gave the box to me. Salas asked

Frost if he (Salas) should give me gun back, and Frost said "why not". I took the gun and put it in the box with the records. Ian and I started walking toward the Diamond Shamrock station. Before I went inside the station, I decided to hide the box behind the brick wall because I didn't want to take the gun into the store. I looked behind me and didn't see anybody, so I put the box behind the brick wall. As soon as I got inside the store I asked to use the telephone and I called David, and as I was talking to David, Frost grabbed me by the arm pretty rough and jerked me around and said "come on Debra". At this time Ian grabbed Frost's arm and asked him "why are you grabbing my Mom's arm". Frost told Ian that he just assaulted a federal officer and said "you are under arrest". Frost let go of me and grabbed Ian by the back of the neck, Ian was screaming and I was screaming "call the police" to the store clerk. Frost took Ian outside, handcuffed him faced down on the payment where the gas pumps were. I begged the store clerk to lock the door; he locked both doors. Frost put Ian in a car. I ran and hid behind the counter and begged the store clerk not to open the door; however, the clerk said that he had to open the door because they were threatening to shoot the door open. The store unlocked the door, Frost walked in and came behind the counter and grabbed me by the arm and said "come on Debra". Frost told me to get the box; with Frost holding me by the arm, I went outside and got the box from behind the wall, at which time Frost took the box from me and said "I'm seizing it and it is now the property of the U.S. Government." He then took me to the car where Ian was (Ian was crying) and Frost said "now if you don't sign the paper you'll never see your son again". At this time David Chavez showed up and told me to get inside the van. David went over and talked to Frost; within a few minutes David came back and said they were letting us go but they were keeping the box.

29. After arriving back at RASMARK I was confused and angry. I didn't know what to believe anymore, whether the things agent Frost and the other agents, including Salas, had said about Mark plotting to kill me was true. I became so angry I smashed Mark's Porsche that was parked in the hanger. Ian and I then got into my car and went home. This incident, from the time I arrived at the Customs Office to when I was picked up by David Chavez, lasted over six hours. Frost told me I would be sorry for not cooperating, and that I would lose

everything.

30. I next saw agent Larry Frost on November 10, 1992. Blanca Avelar and I left the RASMARK office at approximately 1:30 p.m. I cashed my paycheck in the amount of two thousand dollars and drove to Juarez, Mexico in my Mercedes. We went to Juarez to collect on a customers account and to celebrate Blanca's birthday. Blanca Avelar and I then returned from Juarez, Mexico. When we arrived at the U.S. Customs side of the bridge we were ordered to another inspection area. Approximately eight inspectors, along with their dog went through my vehicle. I had previously been subjected to that type of search when returning from Mexico. The inspectors were immediately abusive to Blanca and I. They used abusive language such as "get out of the car you f-----g bitches, shut up, you dog faced slut. One of the inspectors stated they had found a switch blade knife in my car and shouted "it is our car now" I did not learn until later agent Frost and the inspectors had alleged they found .1 gram of marijuana, and used that as the basis for seizing my vehicle. After the inspectors said they found a switch blade knife I was handcuffed behind my back and placed in a cell. Two female agents came in my cell and strip searched me. One of the agents unlaced the top of my blouse and left one of my breasts partially exposed. She also searched my crotch area. Both Agents Frost and Mills then arrived at the bridge and came into the cell where I was being held. Frost stated "Hey Debbie, you got yourself into a little trouble here." Several other agents and inspectors were standing outside of the cell entrance. Frost attempted to interview me without advising me of my rights, but I refused to talk to him. Agent Frost also asked me to sign a paper turning over my Mercedes to the Customs Service, which I refused to do.

31. An El Paso Police officer, who I heard someone refer to as Salas' partner, came down to the bridge and removed me from my cell and placed me into his patrol car. I was still handcuffed and without my shoes. The officer did not take me to the downtown Sheriff's office to be booked, but transported me to the East Valley Substation where I was searched three or four times by both female and male officers against the wall with a rubber glove. The searches took place in a large room and in front of other male officers who were

leering and making snide remarks, yelling at me "hey George". I felt dehumanized. I was subsequently released from the East Valley Substation and given a summons to appear in court and taken to jail. This was the first time I was ever arrested.

32. The charges against me were later dropped and my Mercedes returned without my ever appearing in court, but not before I spent over $6,000.00 in attorney's fees and a cash bond, that has not been refunded. Agents Frost and Mills had carried out their threat that I would be sorry for not cooperating.

33. I frequently took business records home to work on. However I never threw away any business records relating to RASMARK including those referenced in Larry Frost's affidavits for search warrants for our residence and RASMARK dated November 19, 1993. I have no idea how the agents obtained those records, but it wasn't from my trash on Leo Collins or RASMARK. I never threw out any of the items referenced.

34. Before the May 23, 1992 at USCS offices on Viscount and November 10, 1992 incidents at the Port of Entry, I was raised to believe in law and justice. From the time I can remember I would ask my father why he didn't drive faster on the freeway he would tell me 'ITS THE LAW [emphasis in original]; I would tell him Dad other people are driving faster he would tell me 'that does not change the law'. I have never forgot the meaning of law that my father instilled in my memory with those words not to mention the fact that I never saw him break the law in any way whatsoever. I continued on with my high regard for the law. Even though on occasion I knew I did things that were not right such as shoplifting in my teens; however, it was my deep regard for the law that let me know what I was doing was wrong.

35. It took a while for me to understand the meaning of George Salas taking me to U.S. customs on May 23, 1992. For the longest time I wanted to believe that Larry Frost and his crew were making an honest mistake. I also felt somewhat relieve that they were the ones watching me because I felt at least its not some maniac, even though Larry Frost had made treats to me--in his words he said they will

"FUCK UP MY LIFE"[emphasis in original]-- I could not bring myself to believe them. You see you might expect your next door neighbor that hates you to tell you that they're going to fuck you up, but when a federal agent in whom you've placed total trust and have placed above the average citizen tells you this, it completely changed the way you think and feel. I am now in fear of all police officers; I learned the hard way how they cover for each other for their crimes; police have guns, badges, and the term police officer on their side; what more they operate as gangs do and have the strength of numbers, and the average person.... as I was before all this started... tend to believe they are sworn to serve and protect the public. Out of everything that has happened to me in regards to this case what hurts the most is that I will spend the rest of my life knowing what these government agents are like; I will continue to relieve the nightmarish experiences they put me through. If I could change any one belief in my mind it would be that meeting Larry Frost was like having one of my arms chopped off; he has changed my life forever. Even if this law suit is won the corruption of Larry Frost haunts me. I got a tatoo on my arm of a burning flag the day before I went to court because Larry Frost had told me "I know judges you don't have a chance, you're going down." I got the tatoo because I felt Larry Frost was going to kill me because I would not do the things he was ordering me to do. I figured that when I was laying in my coffin people would look at the tatoo (which isn't pretty) and say why would Debra get that.

36. Because of the harassment from the government I can no longer live a normal life. I can't even call for the aid of a police officer if I am in need of one because I am afraid that they will do something to me. I have had experience to justify this fear. One of the worst pains I suffer from is what I have had to teach my children about law and government--not that they didn't see a lot of what happened for themselves. All I know is it shouldn't have been this way, not for me or anyone. I guess it helps a little bit to know that I am not the only one that has gone through the torture I have, even so I wouldn't wish my life on the devil himself. I feel like a freak of nature. I have a hard time relating to anyone; nobody I have ever met has lived through the harassment I have and of course there's those who think I deserved it, and worse the people who don't believe it at all.

37. It wasn't until the first time I was arrested on November 10, 1992 that I felt the law including all police officers were anything but perfect. Everything I had learned about the law being my example was changed. Here the officers were breaking the law. I remember sitting in my cell and watching the female officer walk slowly towards me while pulling on her rubber gloves, the whole time male officers lining up across the back of the precinct. I knew what was about to happen as they unlocked my cell and told me to place my hands on the wall and spread my legs . At that moment I was wishing I had never been born. This was the first time I had been arrested; I always thought that they only treated bad people this way, people that deserved it.

38. There was a time that I believed that police officers didn't lie EVER . I placed my hands on the wall and spread my legs as I was ordered, to this minute still trying to believe that they weren't going to do what I knew they were going to do. The female officer placed her hand inside of my unzipped dress and starting feeling my breast, the length of time she was feeling them seemed like eternity, I could feel a part of my mind leave at that moment the part of my mind that had been lead to believe that all police officers were good.

39. What happened next to this day is still hard for me to let surface in my memory. I see it like a movie, a horror movie. In front of approximately eight uniformed male officers, a male officer lifted up my dress above my waste exposing me while the female officer rubbed her hand and fingers all over my crotch area. I could hear the male officers laughing and making remarks. I starting crying and they starting making fun of me for crying, saying "oh poor baby, get the bitch a rag". At that moment I was visualizing myself turning into vapor and disappearing through a crack in the wall. If someone had told me that this happened to them I wouldn't have believed them, I didn't think the police department was capable of sexual assault.

40. To this day I suffer from this incident and feel I was sexually assaulted by the El Paso police department. I told the female officer that transferred me from the east side precinct to the jail that I had been strip searched five times and she told me that she believed me and that I should file a complaint, however, I was too afraid.

41. Additionally, when I was arrested at the U.S. customs bridge on November 10, 1992, the U.S. custom agent, a male inspector, grabbed me by the back of the neck and smashed my face into a brick wall he gave me a black eye. I remember the black eye lasted for three days and I avoided mirrors because it reminded me of what happened. I remember the agent holding the back of my neck and pushing hard and holding a knight stick over my head with the other hand, he told the two female officers if I even moved he was going to kill me . The two female officers had their hands under my dress where they were feeling my breast and crotch area at the same time. I knew they were feeling me in such a way as to make me try to move away to give reason to the male agent to hit me. I was literally praying to God that I wouldn't move even though It was one of the most uncomfortable feeling I had ever felt in my life, to have two women sexually assaulting me while the male agent held me. These incidents have instilled in me a great fear of police officers and government agents in general. They changed my entire outlook on law and law officers. After the arrest and these strip searches, I tried to act like nothing ever happened but I found myself becoming frantic every time I saw a police car or cop.

42. In addition, the actions of Agent Frost and members of the USCS FTF were directly responsible for Rasmark losing it's biggest customer, Ford Motor Co. Unknown to me, Agent Frost conducted interviews with Gail Beach, a business competitor who was bitter over the fact that Rasmark was receiving more business with Ford than Aero Freight. Beach furnished false information to Agent Frost about the relationship between Rasmark and Andy Gantkessy, a former Ford employee with whom Beach had a bitter relationship. I learned from Beach's deposition in January of 1997, that even though Beach herself told Agent Frost that her information was based upon rumor and hearsay, Agent Frost used that tainted information to drive a wedge between Ford and Rasmark. I also learned in April of 1996 when Attorney Sheppard got Andy Gantkessy's EEOC paperwork from Attorney Silva, that Agents Frost and Schroeder met personally with Ford officials and furnished extensive false information to them about Andy, me, and Rasmark.

43. Mr. Gantkessy was so afraid that he did not reveal to me

or Mark that FROST and other members of the FTF had confronted him in June of 1993. We learned in April of 1996 that Andy refused to become an informant for Agent Frost and the USCS FTF. After his refusal, the USCS SAC in El Paso, Mr. Michael Lappe, wrote a letter to Ford. The letter which Agent Frost has admitted that he, Frost, drafted, was purely malicious and vindictive in nature. It made slanderous allegations against Andy Gantkessy and Rasmark. Most of the information contained in the letter as well as the information furnished verbally by Agents Frost and Schroeder, has since been proven to be false, misleading, and unreliable. The allegations which Agent Frost made regarding monies paid by me to Mr. Gantkessy were personal loans which were repaid. Any free air transportation which Mr. Gantkessy might have received from Rasmark would not have been a violation of any state or federal law. It is clear to me that the letter to Ford was to assure that Mr. Gantkessy would lose his job and the business relationship between Ford and Rasmark would be terminated.

44. During the campaign against me, Mark, Mr. Gantkessy, and Rasmark by Agent Frost and his associates, three federal search warrants were issued. One on May 23, 1992, where Agent Frost, and other members of the FTF, literally terrorized me and my son Ian Maye when they took the box of RASMARK records from me without a search warrant at Diamond; FROST later obtained a search warrant for the box on May 26, 1992. In November 1993 the Rasmark business office and my home on Leo Collins were searched and virtually all our business and personal records, approximately 60 boxes of records, were seized. These records included all the FAA flight logs, aircraft engine logs, and other maintenance records , without which our business could not operate. These records were held by Agent Frost for over 18 months without any logical explanation.

45. The effect of all the combined malicious and vindictive actions of Agent Frost and members of the USCS FTF against us and the Rasmark business was utter devastation. The loss of revenue which should have been generated during the period from early 1991 to mid 1995 was several million dollars at the very least. The loss of future revenue will probably amount to as much as $100,000,000.00.

46. Although Rasmark Jet Charter, Inc. is still in business, the future of the business is uncertain at best. With no prospect of ever recovering it's most important customer, Ford Motor Company, Rasmark has little opportunity to increase in size or to expand into the national air charter market. I just wish these agents and task forces would leave us alone. We are not now, and never have been, in the drug smuggling or money laundering business. We worked very hard in making RASMARK a competitive business and did nothing illegal to earn our success. We have a right to spend our money and enjoy a nice lifestyle, after all, I thought we were living in a free country.

SIGNED this the 8th day of April, 1997.

/s/ Deborah L. Rasmusson
Affiant

STATE OF TEXAS
COUNTY OF EL PASO

Deborah L. Rasmusson, personally appeared before me, and first being duly sworn declared that she signed this affidavit, and further states that she has read the affidavit, and the statements contained therein are true.

SWORN TO and SUBSCRIBED before me this 8th day of April, 1997.

/s/ Dolores Diaz Olague
NOTARY PUBLIC
My commission expires on: 5-5-99

Affidavit of Andrew A. Gantkessy

1. I, Andrew A. Gantkessy, state that the day after I was interviewed by Federal Agents Fred Schroeder and Joe Acosta, in June of 1993, my attorney Tony Silva referred me to attorney Bernard Panetta because the agents had asked me to wear a wire and to make monitored telephone calls. I went to Mr. Panetta's office at approximately 6:00 p.m. on the same day Mr. Silva made the referral, I discussed my two meetings with the Federal agents, including agents Larry Frost, Fred Schroeder, and Joe Acosta. Mr. Panetta stopped me several times because I was talking too fast. Mr. Panetta advised me not to wear a wire and told me the following:

1. The Federal Agents had nothing on me (they were fishing).

2. They didn't give me my rights.

3. They wanted me to do their work for them, by wearing a wire and they didn't care what happened to me.

4. I would be in jail if they had all this evidence against me.

5. To call agent Schroeder and tell him I was not going to wear the wire because of my health problems.

6. If agent Schroeder threatened me again to please come back and see him at once.

2. Mr. Panetta told me not to look so worried, if the agents had anything on me, I wouldn't be there (at his office). I advised Mr. Silva what Mr. Panetta had told me and then telephoned agent Schroeder and told him I would not wear a wire.

3. I have reviewed a photocopy of a letter from the United States Customs Service (USCS) to Ford Motor Company dated July 26,1993 which is attached to and part of this affidavit (**Appendix D, Vol. II, Exhibit 20**). Agent Frost admitted during his deposition that

he wrote the USCS letter to Ford Motor Company. I first saw this letter when Attorney Sheppard asked me to get all of my EEOC file from Attorney Silva in April of 1996 and this letter was in the file that I received. The statements made on page one (l), that I received numerous cash payments and free Lear jet charters from Deborah Rasmusson as payment for favors are false. I never received any cash payments or free charters from RASMARK or the Rasmussons. On one occasion, at the Amigo Air Show, I won a free trip from RASMARK, through a drawing they held, which was open to many other people. I did make other trips on RASMARK aircraft, but I always paid for these trips based on the current air fare of other airlines such as Southwest.

4. Paragraph three (3) includes the statement "as of this date Special Agents have collected irrefutable evidence that Mr. Gantkessy has in fact received several thousand dollars in free aircraft charters and cash payments from Deborah Rasmusson." However, I was never indicted for receiving kickbacks, and the Internal Revenue Service never audited or investigated me. If the evidence was irrefutable I believe I would have been arrested. I never told the agents that Deborah Rasmusson gave me thousands of dollars because she liked me as stated in the letter. The letter also states "Mr. Gantkessy stated Deborah Rasmusson offered him $5000.00 per Ford Charter which Mr. Gantkessy dispatched through RASMARK." That statement is false. Deborah Rasmusson never offered me money for charters. The fact is many if not most of the RASMARK charters for Ford cost less than $5,000.00, and it would be ridiculous for RASMARK to pay me more than they were billing Ford. The letter also states that "approximately one week after this offer he traveled to Las Vegas, Nevada with the Rasmussons and that all expenses were paid by the Rasmussons including $500.00 cash and additional slot machine money which he received from the Rasmussons." The fact is on one Las Vegas trip Mark Rasmusson loaned me about $600.00 in poker chips. I did not use the poker chips and returned them to him the same night.

5. In the second page, paragraph two (2) the letter says "Mr. Gantkessy stated he was taken on a total of four trips to Las Vegas by the Rasmussons on RASMARK aircraft. Mr. Gantkessy farther

acknowledged that he went to the super Bowl and two other professional football games in California with the Rasmussons on RASMARK aircraft. All of these trips and attendant accommodations were at no cost to Mr. Gantkessy." That statement is also not true. I did make several trips on RASMARK aircraft to Las Vegas, however, I always paid the going rate for my airfare and paid all of my related expenses. The letter to Ford states that "Mr. Gantkessy stated that he was told by Deborah Rasmusson that if anyone ever questioned his trips on RASMARK aircraft, he was to tell them that the trips were charters for which he had paid RASMARK and she would provide false invoices to him for verification." In fact, Deborah Rasmusson never told me that, and I never made those statements to the agents.

6. On page two (2) the letter also states "Mr. Gantkessy stated that he received cash from Deborah Rasmusson on several occasions and that these "gifts" were in amounts ranging from $50.00 to $3,500.00. Mr. Gantkessy stated that on one occasion, while in Las Vegas, Nevada, Mark Rasmusson gave him between $1,200.00 and $1,500.00, Mark Rasmusson stated that the money was from Deborah Rasmusson. Mr. Gantkessy stated that he does not know the total amount of cash he received from Rasmussons." Those statements also are not true. I never received any monies or kick backs from Mark Rasmusson, Deborah Rasmusson, or RASMARK.

7. On page two (2), paragraph four (4) the letter states "Mr. Gantkessy stated that Deborah Rasmusson offered him a percentage on a second air freight company she owns which is called Next Flight Inc. Mr. Gantkessy stated that he declined this offer." I was never offered a percentage on a second air freight company named Next Flight, Inc. I was offered a job as a dispatcher with Next Flight, Inc. by Deborah Rasmusson, which I declined.

8. **Appendix G, Exhibit 28** to my affidavit is a USCS Report of Investigation dated June 14,1993 concerning my interviews on June 2 and 3 of 1993. The statements attributed to me in this report are the same as those contained in the USCS letter dated July 26,1993 and are not true. In his declaration, Agent Frost states that he made an

appointment with me regarding the June 2,1993 interview. That is not true, none of the agents ever made an appointment to talk with me on that date. I also was never shown a copy of the report to verify my "alleged" statements. The reports of my June 2 and June 3 interviews failed to disclose that the statements attributed to me were in fact statements the agents confronted me with to verify, and not statements that I made. After continuous badgering by the agents I finally told them I would agree to anything they said so I could get out of the room. As stated in my prior affidavit I was sick and afraid I might have a heart attack. Because of the number of agents present I felt threatened and coerced.

9. The June 3, 1993 portion of the USCS report states; Deborah Rasmusson told me she had given an employee of GM $100,000 for charters given to RASMARK (page 2), and that on two The first time was prior to the first trip to Las Vegas. On the second occasion Deborah Rasmusson gave him an envelope containing money and one cigarette of marijuana." Those statements were also alleged by the agents, not my words. The statements are not true. The USCS report does not reflect all the threats the agents made to me as documented in my affidavit dated October 3, 1996. The USCS report does not mention that the agents asked me to wear a wire and cooperate. Attached to this affidavit is a photocopy of a statement I made to Ford Motor officials on August 19, 1993 (**Appendix D1, Exhibit 43**) which corroborates the information contained in my affidavits, concerning my meetings with the Federal Agents on June 2 and June 3, 1993.

10. I have also reviewed photocopies of two Ford management memorandums related to meetings with the USCS on August 18, 1993 and September 24, 1993 (**Appendix D, Vol. II, Exhibits 20A and 20B**). I received this information on April 27, 1996 from Attorney Silva. The first meeting on August 18, 1993 was between Phil Asiala, Tim Pomaville, and Larry Frost. The memorandum states in part "Mr. Frost indicated that Gantkessy was deeply involved with the Rasmussons and RASMARK Charters, and described pertinent testimony that implicates Gantkessy in accepting money, air transportation, and other forms of kickbacks from

RASMARK... he assured us that Mr. Gantkessy has become a part of the investigation." I never accepted any money, air transportation, or other forms of kickbacks from RASMARK. If I were a part of the investigation I was never advised of my rights during either of my interviews on June 2 and June 3, 1993.

11. The second Ford memorandum **(Appendix D, Vol. II, Exhibit 20B)** involves a meeting between Ford officials and USCS agent Fred Schroeder on September 24, 1993. The memorandum states: "They recommended that we speak with Bob Hunter from the air charter service known as Kitty Hawk. He knows a lot about the activities of RASMARK and Andy Gantkessy. He knew a lot about Gantkessy's corrupt activity even though he may not be subject to criminal prosecution. They did state, however, that Andy will most likely have major problems with the IRS, because it will be established that he has been receiving payoffs from RASMARK, and naturally, did not claim any of it. They describe Hunter as a willing participant who will quickly describe his knowledge of Gantkessy's cheating Ford out of large amounts of money and stating, 'don't worry about it'. In one of Mark Rasmusson's moments of anger over a pending divorce he made the statement to Hunter that Andy got paid of 'big time'." I was never involved in any corrupt activity with anyone including RASMARK. The statement that I may not be subject to criminal prosecution contradicts Frost's statement to the Ford Motor officials on August 18, 1993 when he assured them I had become a part of the investigation **(Appendix D, Vol. II, Exhibit 20A)**. I also never had any problems with the IRS either civil or criminal, because I never received any payoffs or had any unreported income. I was never the subject of a civil audit or criminal investigation by IRS which was verified by IRS Special Agent Fonda Hivick during her deposition. I never cheated Ford Motor or anyone else out of money and certainly never told Bob Hunter "don't worry about it" as stated in the memorandum. I also was never paid off by Mark Rasmusson or RASMARK for charters.

12. The second and third paragraphs of the September 24, 1993 memorandum states: "Schroeder also states that it is important for us to know that the second meeting that they had with Gantkessy was at

the request of Gantkessy, and he volunteered all of the information. He was not asked, threatened, or coerced into saying anything, but came in voluntarily and admitted receiving marijuana from Debbie and $9,000 in cash, which did not include flights, gifts, lodging or any other costs of travel. He gave specific answers to questions and expounded on what he did. He stated that he knew he was violating Company rules. He said, 'I'll cooperate, just don't tell Ford.' I'll lose too much. I'll wear a tape recorder if you want, but just don't tell Ford".

13. It should be noted that he admits cheating on shipments by using more airplanes and other items to boost RASMARK profits." I never requested the second meeting and never volunteered any information. The information contained in those two paragraphs is not true. It is also of record that the USCS report of my interviews on June 2 and June 3, 1993 make no mention that I came in voluntarily, that I received 9,000 in cash, and that I knew I was violating (Ford) Company rules. There is also no mention in the report that I would cooperate, just don't tell Ford, that I would wear a tape recorder, or that I was cheating on shipments by using more airplanes and other items to boost RASMARK profits. If those statements by me were true they should have been included in the USCS report of my interviews. In fact none of the statements are true.

14. The concluding paragraph to the September 24, 1993 Ford Motor memorandum states:

> "THESE AGENTS REMINDED US OF ONE VERY IMPORTANT ISSUE. GANTKESSY CANNOT TAKE THE STAND AND TESTIFY ON ANY OF THESE ISSUES IF HE WERE TO BRING A LAWSUIT AT FORD, BECAUSE IT'S A CRIMINAL OFFENSE TO LIE TO FEDERAL AGENTS. IF THE ISSUE GOES TO COURT HE WILL END UP BEING PROSECUTED FOR FALSIFYING INFORMATION TO THE FEDERAL AUTHORITIES. THEY ARE STILL COOPERATING AND WILLING TO TESTIFY TO GANTKESSY'S PARTICIPATION IN

ACTIVITIES OF RASMARK."

This was clearly an effort by the USCS and agent Schroeder to ensure Ford Motor officials that if I denied the bogus statements attributed to me and filed a law suit against Ford they (the Federal agents) would prosecute me for falsifying information to Federal authorities.

15. The letter to Ford Motor, dated July 26, 1993 (**Appendix D, Vol. II, Exhibit 20**) and the two meetings with Ford Motor officials on August 18, 1993 by agent Larry Frost, and on September 24, 1993 by agent Fred Schroeder and El Paso Police Department Officer James Holland (**Appendix D, Vol. II, Exhibits 20 A and 20B**) involved improper disclosures, and lies, and were part of a vendetta against me for refusing to wear a wire and assist them in their bogus investigation of Mark and Deborah Rasmusson and RASMARK. The USCS letter to Ford and subsequent two meetings by agents Frost and Schroeder with Ford officials were a major factor in my termination by Ford Motor Co. and the related loss of my pension.

16. I have also reviewed a photocopy of a United States Customs Service report, number 064, dated March 22, 1993, concerning an interview conducted March 9,1993 with Gail Beach (**Appendix G, Exhibit 24**). The allegations made by Beach (page 4) that I was in a kick back scheme with RASMARK and sexually compromised by Deborah Rasmusson is totally false. During her deposition, Beach under oath stated that she told the agents the information she was providing was based on rumors and hearsay. Agent Frost failed to include that in his report in an effort to make the information provided by Beach appear factual.

17. Gail Beach's statements about RASMARK, the Rasmussons and myself were totally motivated by her desire to destroy the RASMARK business, especially as it related to Ford Motor Company. Gail Beach in her "Answers to Admissions" (**Appendix I, Exhibit 7**) subsequently denied telling USCS agents Lawrence Frost and Eric Mills "the Rasmussons were engaged in a 'kick back' scheme with Joe Sudomir and Andy Gantkessy (Admission 5)."

18. I also reviewed a photocopy of USCS report number 073, dated March 30,1993 concerning an interview with Chris Hines and written by USCS agent Fred Schroeder (**Appendix G, Exhibit 26**). I know that Chris Hines was a disgruntled employee who was fired by RASMARK. After being fired Hines made it a point to bad mouth RASMARK, the Rasmussons, and myself whenever he got the chance. On page 2, paragraph 2, Hines states that Deborah Rasmusson gave him a $4,000 check to cash and he believed the money was going to me. I never received any monies, including the $4,000, for contracting air charter services with RASMARK. Hines also states in the same paragraph that Deborah Rasmusson gave him another check to cash because she owed me money. According to Hines he was supposed to deliver the money to me, but Deborah Rasmusson later changed her mind and had him (Hines) return the cash to her. I never received any monies and or kickbacks from RASMARK or the Rasmussons. I do recall that one time I loaned Deborah Rasmusson cash which she subsequently repaid. On another occasion Deborah Rasmusson used either the RASMARK or her personal credit card to purchase some flowers for my wife at my request. However, I reimbursed her for the expenditure. In the last sentence of page 2, paragraph 2, the USCS report states "Hines further stated that Gantkessy and RASMARK were billing Ford for flights that did not occur." That statement is a lie. Ford Motor's accounting procedures would not allow that to happen. Destination shipping invoices are matched with the billing invoices and if the shipping invoice was not in the file the billing invoice would not be paid.

19. On page three, paragraph two of the USCS report, (**Appendix G, Exhibit 26**) Hines states he was told by Deborah Rasmusson that she owed me money because I allowed them (RASMARK) to hold some Ford freight for several hours in order to fly the Mexican police. That statement is also untrue. RASMARK had several Lear jets and a Falcon jet, and normally had aircraft available to handle all the Ford Freight. In his deposition, USCS agent Schroeder stated he didn't think that the credibility of a witness would be affected by the fact that they had been fired. Agent Schroeder failed to notate in his report that Hines had been fired by RASMARK. In his "Answers to

Admissions" (**Appendix I, Exhibit 8**), Hines denied telling USCS agent Fred Schroeder and El Paso Police Detective Holland that "Debra Rasmusson stated the money was for a person who had given them a lot of business (Admission 6)." The denial related to USCS report number 073 (**Appendix G, Exhibit 26**), page 2, paragraph 2. Hines also denied telling agent Schroeder and officer Holland that "Debra Rasmusson went on to state that she owed Andy Gantkessy some money, but could not put his name on the check (Admission11)." The denial also related to USCS agent Schroeder's report (**Appendix G, Exhibit 26**), page 2, paragraph 2. Hines also denied telling agent Schroeder and officer Holland that "Gantkessy and RASMARK Jet Charter were billing Ford for flights that did not occur (**Appendix I, Exhibit 8,** Admission 13)." USCS agent Schroeder admitted under oath during his deposition that the witnesses were not allowed to review the reports for accuracy.

20. I have reviewed photocopies of two Ford Motor Company interviews/reports with Gail Beach and Mark McAllister. The first report is styled "CONFIDENTIAL" and is dated January 2,1992 and includes an interview with Gail Beach conducted on December 17, 1991 (**Appendix D1, Exhibit 37**), and interviews with other Ford Favesa employees and suppliers. The second report by Ford Motor is styled "Notes, El Paso Visit, September 21, 1993" and includes interviews with Gail Beach and Mark McAllister (**Appendix D1, Exhibit 39**). Gail Beach was the owner of Aero Freight, Inc. and a competitor of RASMARK. Gail Beach hated Mark and Deborah Rasmusson and was jealous of their business. The statements contained in the Beach interviews on December 17, 1991 and September 24, 1993 are untrue.

21. The truth is Joe Sudomir was my immediate supervisor at Ford Favesa and had the ultimate say as to which charter services Ford Favesa contracted with. **Appendix D1, Exhibit 41** is a management diagram which shows that my supervisor was Joe Sudomir. The facts are that RASMARK offered better service, cheaper rates, and had superior equipment. That is why Ford Favesa preferred to contract with RASMARK. I have never received any kick backs, monies, free flights, sexual favors, or any other gratuities from anyone associated

with RASMARK in exchange for awarding charters to RASMARK. I never called Deborah Rasmusson to tell her Viking Charter had struck a deal as indicated in the December 17, 1991 interview. In addition, RASMARK never spread a load of freight over three or four Lear jets when one Falcon would do the job and was available. Beach's allegations, on **Appendix D1, Exhibit 37**, page 2 of the December 17, 1991 interview, stating that RASMARK charged .20 (cents) more per mile, and that Aero Freight charged $1000 less per trip are both lies. RASMARK was always equal to or cheaper than the rates of the other carriers including Aero Freight. Gail Beach and Aero Freight had to subcontract almost all of their Ford Favesa charter work, because they owned only one aircraft. I never saw RASMARK over fill a plane or damage cargo including relating to the Ford charter work as indicated by Beach during the December 17, 1991 interview (**Appendix D1, Exhibit 37**, page 2).

22. Beach's lack of credibility is further reflected in her statements regarding Joe Sudomir (**Appendix D1, Exhibit 37**). On December 17, 1991 Beach told Ford officials that rumors suggest that Gantkessy and possibly Sudomir are receiving sexual favors and are on the RASMARK payroll. Also Beach believes that Sudomir must be involved in the unprincipled business practices between the El Paso warehouse and RASMARK. On March 9, 1993 Beach allegedly told USCS agents Frost and Mills the Rasmussons were engaged in a kick back scheme with Sudomir (a statement Beach subsequently denied). Also that Deborah Rasmusson was paying Sudomir $1,000 per trip which Sudomir brokered through RASMARK for Ford Favesa. On September 21, 1993, Beach told Ford officials "Joe was a tough customer, demanded that everything be done properly, and was never known to accept any form of gratuities (**Appendix D1, Exhibit 37**, page 2)."

23. Included in the Ford Motor report (**Appendix D1, Exhibit 37**, page 3) is an interview with Mark Short an employee of Gail Beach and Aero Freight, Inc. Short alleges that RASMARK charged Ford $2.90 to as high as $3.15 per Lear 25 mile, while Aero Freight charged $2.50 per Lear 25 mile. Short stated he brought this

discrepancy to my attention on several occasions. The amount Short states RASMARK charged Ford Motor is not correct. RASMARK's rates were always competitive to the other carriers and were always equal to if not lower.

24. **Appendix D1, Exhibit 37,** page 3 also includes an interview with Chris Hines a former employee of RASMARK. Hines states that he came to me on numerous occasions with proposals to reduce Ford charter costs and that I objected to his initiatives, and berated him. Hines also states that I told him Ford is not his or RASMARK's friend, and that it is not in his or RASMARK's best interest to decrease charter costs. Those statements are simply not true. I worked closely with RASMARK to ensure that Ford Motor received the best deal possible. Hines did not approach me with any proposals to reduce charter costs. I never told him Ford was not his or RASMARK's friend or that it was not in his or RASMARK's best interest to decrease charter costs. Hines also told the Ford officials that in December of 1990 Ms. Rasmusson sent him out to cash a check for several thousand dollars. When he (Hines) questioned Deborah Rasmusson about the purpose of the money she responded that if you ever bring me the kind of business this guy has, you too will receive a bonus. Hines denied making a similar statement to the USCS in his "Answers to Admissions" (**Appendix D1, Exhibit 37** and **Appendix I, Exhibit 8,** Admission 6). Hines also stated the following night at a Christmas party held at the Rasmusson home I was giving extravagant tips to the bartender, his younger brother. I never received the money alluded to by Hines from RASMARK or Deborah Rasmusson. It may be true that I gave his brother large tips, but it was Christmas and I was in a good mood and felt generous, having survived a stroke and open heart surgery.

25. I have also read the photocopy of the Ford Motor interview with former RASMARK pilot Mark McAllister (**Appendix D1, Exhibit 39**). In page 1, paragraph 2, McAllister discusses a trip I took with RASMARK in November 1990. As I previously stated I took several trips with RASMARK to Las Vegas, but always paid for my airfare and other expenses. I paid for my airfare to Deborah Rasmusson

not McAllister so he had no way of knowing what I paid or if I paid. On page one, paragraph four, McAllister alleges that RASMARK was charging Ford $2.75 per mile while everyone else was paying $2.50 per mile. I know that RASMARK's prices to Ford were always equal to or less than that of the other charter services. McAllister also alleges he learned quickly not to ask why they were using two planes instead of one larger plane, and that this was very costly to (Ford) Favesa by several thousand dollars each trip. I am not aware of RASMARK ever splitting up freight on two Lear jets, when one Falcon jet was available and could have carried the load. McAllister also makes it sound mysterious that I stopped by (at RASMARK) and loaded small boxes on planes for trips which was unusual. That is a lie. I assisted in loading freight on RASMARK and other charter company aircraft on a daily basis. McAllister also alleged (page 411, paragraph 5) that I was falsifying manifests. Also that the most common (falsification) was falsifying the amount of weight on the manifests. McAllister said I loaded more weights (excess weights) and "fooled" the pilots by not telling them what I did. McAllister said the problem was that they would load the planes so full that there was no aisle way, no exits, and it was so bad they would have to stick the credit card against the inside glass when they purchased fuel for the airplanes. I never falsified a manifest or the amount of weight on the manifest. I also never saw a RASMARK aircraft overloaded as described by McAllister. I was never involved in any "illegalities" or "dishonesties" with RASMARK as alleged by McAllister.

26. I have also reviewed a photocopy of a Ford Motor interview with Chris Hines and Bryan Hines, former employees of RASMARK, dated September 24, 1993 (**Appendix D1, Exhibit 42**). Chris and Bryan Hines discussed two trips to Las Vegas. The first trip related to a pilot named Art who got married in Las Vegas and the second Las Vegas trip related to a Mike Tyson fight. The Hines brothers also discussed a trip to the superbowl. Chris and Bryan Hines both indicate I went on each of the three trips, which is true, but what they didn't discuss was that I paid for my own airfare and expenses on each of the trips. I did not pay Chris Hines or Bryan Hines, however, I did pay Deborah Rasmusson the fare market value of my airfare and

related expenses. I am not aware of RASMARK overloading their aircraft or using unqualified people as co-pilots as indicated by the Hines brothers. Bryan Hines also stated he went into Deborah Rasmusson's desk drawer and saw blue check stubs which had been made out to me. Both stated they remember her (Deborah Rasmusson) making out checks that would show Chris' (Hines) commissions and Mexican fees, but that he (Chris Hines) never got the money, and that it was a cover to pay me without "tracers." I never received any money, including RASMARK checks or anything else for awarding charters to RASMARK. Bryan Hines also discussed a superbowl trip that was canceled because Joe Sudomir found out about it. In fact, the trip was canceled by RASMARK. If I had gone I would have paid for my own airfare. In the last paragraph Bryan Hines alleges that Deborah Rasmusson and I were scheming all kinds of extra flights, and that we (Deborah Rasmusson and I) had hundreds of excess charters, and it must have cost Ford millions. Bryan Hines also stated he saw me "fudge" the figures to benefit RASMARK. Bryan Hines' statements are totally absurd relating to the hundreds of excess flights and costing Ford millions. I never awarded RASMARK one excess charter. As I previously stated in my affidavit Ford's internal accounting procedures would identify any such scheme. I also never fudged on or altered any figures relating to RASMARK invoices to Ford. In addition, I never hid any freight to boost the number of flights (for RASMARK) and make more money (for RASMARK).

27. I also reviewed photocopies of two affidavits for search warrants, each dated November 19, 1993, signed by agent Lawrence Frost. **Appendix G, Exhibit 3A** consists of excerpts of Frost's affidavit for search warrant relating to 11157 Leo Collins Dr. (the Rasmusson's residence). **Appendix G, Exhibit 3B** consists of excerpts of Frost's affidavit for search warrant relating to 6805 Boeing Drive (RASMARK Jet Charter). In **Appendix G, Exhibit 3A**, paragraph 68 Frost states that Beach told him "the Rasmussons were engaged in a 'kick back' scheme with Joe Sudomir and are currently engaged in such a scheme with Andy Gantkessy." In her answers to Admissions (**Appendix I, Exhibit 7**) Beach denied making the statement (Admission number 5). In addition, I have never received and any form of kick backs from

RASMARK or the Rasmussons. On pages 15 and 16, paragraphs 78 and 79, agent Frost outlines an interview with Chris Hines, a former employee of RASMARK, which was conducted by agent Schroeder and officer Holland. Frost in his affidavit states "Debra Rasmusson gave him (Hines) a check for $4,000.00 and told him to cash the check and bring the money back to her . . . Debra Rasmusson further stated (to Hines) that the money was for a person who had given them a lot business. Mr. Hines believes the money was going to Andy Gantkessy (paragraph 78)." In his "Answers to Admissions" Hines denied making the statement that "Debra Rasmusson stated that the money was for a person who had given them a lot of business." I never received the referenced monies or any other monies or gratuities from Deborah or Mark Rasmusson, or RASMARK, **(Appendix I, Exhibit 8)**.

28. Frost's affidavit also states "on another occasion Debra Rasmusson gave Mr. Hines a check to cash. In the ledger Debra Rasmusson wrote the notation 'Chris's Commission,' she stated the money was not for Hines. Debra Rasmusson went on to state that she owed Andy (Gantkessy) some money, but could not put his name on the check (page 16, paragraph 78)." In his "Answers to Admissions" Chris Hines denied telling agent Schroeder and officer Holland "that Debra Rasmusson went on to state that she owed Andy Gantkessy some money, but could not put his name on the check (**Appendix I, Exhibit 8**, Admission 11). I never received any monies or other gratuities from Deborah or Mark Rasmusson or RASMARK for awarding charters to RASMARK. Frost's affidavit also states (paragraph 80) "Mr. Hines further stated that Gantkessy and RASMARK Jet Charter were billing Ford for flights that did not occur." In his "Answers to Admissions" Chris Hines denied making that statement to agent Schroeder and officer Holland (**Appendix I, Exhibit**, Admission 11). The statement is a complete lie RASMARK and I never conspired to bill for flights that did not occur.

29. On pages 19 paragraphs 95 through 100, agent Frost's affidavit references my interviews on June 2 and June 3. Agent Frost in paragraph 95 states that I agreed to talk to the agents. That is not true, agent Frost and approximately 6 other agents appeared at my place

of business unannounced. Because of the amount of agents I felt threatened and intimidated. I asked to call my wife and call an attorney, but I was told if I got out of my chair, I would be arrested. In his affidavit agent Frost states "Mr. Gantkessy stated that he had received money from Debra and Mark Rasmusson, however he did not think the money was a pay off. Mr. Gantkessy was told by Debra Rasmusson that she was giving him the money because she liked him. Mr. Gantkessy further stated that he had gone on several free trips with the Rasmussons." I deny making any of those statements, the words and statements were those of the agents. Because I was feeling sick and I was afraid I was going to have a heart attack, I finally told the agents I would agree to anything they said. In paragraph 97, Frost states "Special Agent Schroeder made arrangements to have Mr. Gantkessy come to the Office of Enforcement for a more detailed interview on June 3, 1993." The fact is I was ordered to report to the USCS office and was told that if I failed to show up at the Customs office I would be arrested.

30. Agent Frost in his affidavit states (paragraph 99) "Mr. Gantkessy stated that he received money on several occasions from Debra Rasmusson, other than on the trips. Mr. Gantkessy stated that Debra Rasmusson gave him different amounts anywhere from $50.00 to $3,500.00 in cash. Mr. Gantkessy stated that on one of the trips to Las Vegas Mark Rasmusson gave him $1,200--$1,500.00, stating that it was from Debra Rasmusson. Mr. Gantkessy was not sure however what the total amount that he received was." I never received any of the cited amounts from the Rasmussons. The words in paragraph 99 are those of agents Acosta and Schroeder. Agent Schroeder failed to include in his report that I told the agents that I was not aware of any illegal activities on the part of either Mark or Deborah Rasmusson or any employee of RASMARK. Frost also stated in his affidavit (paragraph 100) "Mr. Gantkessy stated that Debra Rasmusson also offered him (Gantkessy) a percentage of a company she was starting called 'NEXT FLIGHT'. Debra Rasmusson stated the company would be under David Chavez's name in order to qualify for minority status. Mr. Gantkessy stated he again refused the offer." I told agent Schroeder and officer Holland that Deborah Rasmusson offered me a job with

Next Flight, not a percentage of the company, and I declined the job. Agent Schroeder also failed to include in his report that he asked me to wear a wire and to record conversations with the Rasmussons. I told agent Schroeder I would think about it and call him the next day. Agent Schroeder also asked me to make a phone call from his office to Mark Rasmusson and to allow him to record the call. I refused to make the phone call. Before I was allowed to leave the customs office agent Schroeder again threatened me, telling me that I would lose my job and go to jail if I refused to cooperate with him and the other agents. He (agent Schroeder) assured me that if I cooperated nothing would happen to me.

31. On **Appendix G, Exhibit 3A** , page 25, paragraph 123, agent Frost states "I believe there is probable cause to believe that RASMARK Jet Charter has 'double invoiced' flights for Ford Motor Company and bribed Mr. Gantkessy to cooperate in this scheme." The truth is, RASMARK working with me, never double invoiced Ford. It is also my understanding that Mr. Vargas denied telling the agents that RASMARK was "double invoicing." Mr. Vargas said what he told the agents was that he prepared a second invoice to replace a missing or lost invoice.

32. I have also reviewed excerpts of agent Frost's affidavit for search warrant relating to RASMARK Jet Charter, 6805 Boeing Drive, **(Appendix G, Exhibit 3B)**. The allegations against me are identical to those contained in **Exhibit 3A.** I deny the allegations against me in **Exhibit 3B** for the same reasons cited relating to **Exhibit 3A.**

I have read the above statement consisting of this page and six other pages. The information contained in the statement is true and correct to the best of my knowledge.

Signed this 8th day of April, 1997.

/s/ Andrew A. antkessy
Affiant

STATE OF TEXAS
COUNTY OF EL PASO

SUBSCRIBED AND SWORN to before me, the undersigned authority, on this 8th Day of
April, 1997.

/s/ Dolores Diaz Olague
NOTARY PUBLIC IN AND FOR THE
STATE OF TEXAS
My Commission expires: 5/5/99

[Paragraphs numbers added to text}

HANDWRITTEN STATEMENT

1:30 PM, 8/19/93

ANDY [ANDREW A.] GANTKESSY

1. Regarding the issues that have been brought to my attention on 8-19-93, the following is my response:

2. Regarding the money issue that I allegedly received money from Rasmark, I told the federal investigators what they wanted to hear. Whatever they asked me I was physically and mentally in no condition. They kept saying they were going to drag me out handcuffed with Ford Motor authority. They mentioned varying amounts of money, $1200, $1500, $5000, and $3500. I just said "yes, if you say so." I asked about a lawyer and they said "if you want a lawyer we will arrest you."

3. Everything which refers to Rasmark is in fact, in reference to Debbie and Mark Rasmusson.

4. Regarding the free charters; one charter which was free was done at the Amigo Air Show and I won. Carl Peugh, Bob Card were present (the drawing was in front of about 80 people) the drawing which entitled me to that flight. It was on Rasmark Charters to Law Vegas. The Super Bowl, 1993 I paid for my flight to the Superbowl in Pasadena on Rasmark passenger plane. There were two other couples plus Debbie and Mark Rasmusson, plus the co-pilot. I flew in on Saturday morning and flew back on Monday morning. I don't remember the name of the hotel where we stayed but I remember paying $45 cash per night. I shared the room with their co-pilot I can't remember the name.

5. I took a couple trips to Las Vegas that I recall and paid cash to Rasmark at fair market prices. Whatever Southwest charged I paid.

6. One of the trips to Vegas included California also. Again,

I purchased "scalper" tickets at the stadium in Los Angeles (Raiders - 49ers game).

7. I never received any money from Rasmark for awarding charters. I never received free flights and money for gambling in Las Vegas from the Rasmussons. I did say "whatever you say" when they made these allegations. I said this to end the meeting.

8. Deborah Rasmusson offered me a job to be a dispatcher for Next Flight Co. about February, 1993. I declined the offer. I assume that Debbie was the principal owner and Dave Chevez was the president. They were listed as a minority company and I reviewed it with Division (Dave Falk). [Added notes: I asked Dave Falk if I could use them.; Dave Falk told me to use them, it was a minority] Ford had approved them for a minority carrier & I used them for a couple flights. I then spoke with Osidacz (May or June '93) and George Demopolous regarding Next Flight as a minority carrier. They said "don't use them". Osidacz had called me and asked if I had a carrier near McCallan. I said "no," I didn't even know where it was at. He said closest is Dallas and I said "Why don't you use Next Flight" and he said "No, don't use them at all."

9. Around July 4, 1993 Mark and Deborah Rasmusson asked me to speak with them. I went by after work and they offered me a position as a dispatcher, that their dispatcher quit and I could work for both of them. Debbie was there and agreed that I could work for both of them.

10. This statement is true and accurate to the best of my knowledge.

/s/ ANDY GANTKESSY

WITNESSES: /s/ T. Pomaville

/s/ Phil Asiala

Affidavit of Lee Andrea

I Lee Andrea state that I reside at 1500 Ashford #39, Horizon City, Texas 79927. I further state I was employed as a bellman and later as banquet manager for the Airport Hilton from 1993 to 1995. In 1993 I was employed [as] a bellman and was working a night shift. One night I was approached by an individual who identified himself as a law enforcement officer. I do not recall his name or the agency he was with. He was approximately 6' tall with a thick moustache and was Anglo. He told me he was investigating the driver of a Bronco XLT, which I believe was blue and beige. I did not know the name of the owner, but know he was a friend of or associate of Jack Quarles. I now know that individual's name is Mark Rasmusson, who I met at an air show last year. The law enforcement officer implied the individual was wanted by the law and dangerous. He also told me he couldn't go into his room to arrest him, but had to wait for him to come outside. The officer asked me to look up several names in the hotel computer to determine which room the individual was staying in. I told him no. The officer stayed at the hotel from approximately 11:00 p.m. to 1:30 A.M.

I have read the foregoing statement consisting of 1 pages, each of which I have signed. I fully understand this statement and it is true, accurate and complete to the best of my knowledge and belief. I made the corrections shown and placed my initials opposite each.

I made this statement freely and voluntarily without any threats or rewards, or promises of reward having been made to me in return for it.

/s/ Lee Andrea

Subscribed and sworn to before me this 19th day of September, 1996, at Emerald Springs Country Club.

/s/ Edward H. Wagner
Notary Public
My Commission expires on 9/29/99

/s/ Henry A. Webb
Witness

[Paragraph numbers added to text]

Affidavit

1. I Albert Apodaca state that I am a Certified Public Accountant and my office is located at 2507 E. Yandell, El Paso, Texas 79903, telephone # 915/545-1902. I have reviewed photocopies of a DEA Form 6, dated September 13, 1990, and excerpts from Larry Frost's Affidavit for a search warrant, which are attached to and part of this affidavit. I wish to make corrections and/or clarifications to the statements attributed to me as follows:

2. In both reports the agents discuss a single $11,000 cash transaction, I had told the agents the money was from several cash transactions. Mark Rasmusson asked me if he should reconstruct the missing invoices related to the $11,000. Mr. Rasmusson did not ask me if he should match the invoices to the amounts the government agents knew about as indicated in the DEA Form 6 and affidavit, and that is not what I told the agents. I also did not tell the agents I was alarmed by Mark Rasmussons actions, what I did tell them was that I was alarmed by their contacting me. It was not because of anything Mark Rasmusson did. I also told the agents I always knew Mark Rasmusson to be very honest, and that I was not aware of him being involved in any illegal activity. That was not included in either report.

3. It is true that Deborah Rasmusson gave me a letter stating RASMARK did not accept cash. I was never told that by Mark Rasmusson. . . . [correction initialed by Affiant] I also did tell the agents that I was familiar with RASMARK's major accounts. I also told them I was not familiar with the Jesus Flores/Vista Remodeling account. However, the agents implied Flores/Vista remodeling was a major account which is not true. Even if Flores/Vista Remodeling had spent $50,000 that would not make them a major account. Ford Motor and Chrysler were major accounts and their business with RASMARK was close to or in excess of a million dollars a year. Also, Deborah Rasmusson has never made

any statements to me about taking cash under the table as reflected in the DEA report. I also never told Arturo Vargas that Deborah Rasmusson admitted not paying taxes on $100,000 of income in 1990 or 1991, as reflected in Larry Frosts affidavit.

4. I did require that DEA give me a subpoena prior to giving them any records, I believe this was done at the recommendation of my attorney, not Mark Rasmusson. The Internal Revenue Service did an audit of . . . [Correction by Affiant] 1989-1990 income tax returns for RASMARK. This audit resulted in a "no change" or no additional tax due. I . . . [correction by Affiant] will provide photocopies of the Deborah Rasmusson's letter, the IRS audit report, the referenced May 1990 financial statement which are also attached to and part of this affidavit.

5. I was never shown a copy of the DEA Form 6 regarding my alleged statements until just before Mark Rasmusson's trial. At that time I told agent Perkins some of the statements attributed to me were not correct.

/s/
Albert Apodaca

State of Texas
County of El Paso

Albert Apodaca , personally appeared before me, and being first duly sworn declared that he/she signed this affidavit, and further states that he/she has read affidavit and the statements contained therein are true.

Sworn to and subscribed before me this 24th of Sept., 1996.

/s/
Edward Wagner
Notary Public
My commission expires on 9/29/99

/s/
Henry A. Webb
Witness

AFFIDAVIT

HANDWRITTEN STATEMENT

I, David Barron, state that: I reside at 364 Cross River, Horizon City, Texas 79927. I further state I am a friend of and have know (sic) Mark Rasmusson for approximately 7 to 8 years. In 1992 or 1993 I went to the offices of Rasmark to visit Mark. At that time their offices were located in Julie's Aircraft. When I arrived Rasmark was being raided by agents from U.S. Customs, DEA, FBI, and other agencies. They told me to get out and that the office was sealed off. Approximately 6 months after the business was raided I was called by an agent, whose name I don't recall, who told me he would cut me some slack if I would cooperate and be an informant for him. I flew around with Mark and he wanted me to tell him where Mark was going and what he was hauling. I told the agent Mark wasn't doing anything illegal and that everything he did was legitimate. The incident he was attempting to use involved a business associate of mine who was arrested for some type of gun violation. I told he agents I was only sharing office space with the individual they arrested. I was never arrested or charged regarding my associate's activities. D.B.

I have read the foregoing statement consisting of 2 pages, each of which I have signed. I fully understand this statement and it is true, accurate and complete to the best of my knowledge and belief. I made the corrections shown and placed my initials opposite each.

I made this statement freely and voluntarily without any threats or rewards, or promises of reward having been made to me in return for it.

/s/David Barron

Subscribed and sworn to before me this 28th day of October, 1996, at 7873 N. Loop, El Paso, TX.

/s/ Edward Wagner
Notary Public
My commission expires 9/29/99

/s/ H. Webb
Witness

[Paragraph numbers added to text]

Affidavit of Jerry Burnett

September 20, 1996

1. I Jerry Burnett state that I reside at 329 Pyrite in El Paso, Texas, telephone number 584-9644. I further state I was previously employed by Rasmark Jet Charter, including part of 1990. I have reviewed photocopies of a DEA Form 6 dated September 7, 1990, consisting of seven pages, and my trial transcript both of which are attached to and made part of this affidavit.

2. There are numerous items in the DEA report that are misleading statements or total lies. In paragraph 2, I told the agents I thought pilot Jimmy Young had made some trips. In paragraph 4, I never told the agents I know that Jesus Flores was in the illegal drug business. If I had even thought that I would have told Mark Rasmusson. Also in paragraph 4, I never had any discussions with Mr. and Mrs. Rasmusson, during the period indicated, about Flores being in the drug business. The Rasmussons never told me they know Flores was in the drug business, or that even though Flores was a dope dealer to fly him wherever he wanted to go, just be careful not haul illegal drugs. Those statements are total fabrications.

3. In paragraph 5, I never told Agent Perkins the passengers on the Cancun flight had substantial baggage, the passengers had a normal amount of baggage. Also in paragraph 5, it is also a fabrication that the Rasmussons did not want anyone to know about these trips. ... [correction initialed by affiant]. The flights were legally flown and entered in our FAA duty sheets.

4. In paragraph 6 I never knew the name of Arturo Bermudez until I was told it by DEA. I did identify a photo of an individual DEA told me was Arturo Bermudez, who was at Perkins I had the impression one of the passengers was from Bogota, Colombia. I also told agent Perkins that I did not speak Spanish well enough to speculate where the

passengers were from; however, agent Perkins persisted in that line of questioning. I also never told agent Perkins that I thought the passengers on the Orlando flight, discussed in paragraph 8, were illegal drug load drivers and they wanted to stay stay [sic] inside the jet so they would not be seen.

5. I also never told agent Perkins that I stayed away from asking direct pointed questions because I believed I was transporting Colombian illegal drug transporters, as stated in paragraph 11, regarding a third trip to Florida. Mark Rasmusson never told me the passengers I had taken to Florida for Jessie Flores were involved in the cocaine bust made by Mexican Federal Police in Villa Ahumada, Mexico. Mr. Rasmusson also never told me the passengers had been the pilots of the [aircraft seized by OCEDTF].

6. Paragraph 16 of the DEA report is a total lie. I never stated Mark and Deborah Rasmusson were not being truthful with the agents, or that they were scared to death that the truth would come out including IRS and FAA violations. I also never told agent Perkins that the Rasmussons knew Flores was an illegal drug trafficker. I also never told the agent Perkins the Rasmussons were taking cash under the table and not claiming the money on their taxes or business records. I also was never told by Mark and Deborah Rasmusson that Flores was paying in cash and the cash could not be traced to them, and I did not make that statement to agent Perkins.

7. I did tell agent Perkins that Rasmark had done approximately $50,000 in work for Flores, but never used the word pocketed. I also never told DEA that the Rasmussons had not filed IRS reports when they received in excess of $10,000 cash from Flores. I did tell agent Perkins that I received cash from one of Jessie's boys of something less than $10,000. After I left Rasmark, Flores negotiated with me personally on several occasions to pilot him. Rasmark contracted the aircraft but had nothing else to do with arranging the flight.

8. I was never shown a copy of the DEA report to verify or correct the statements attributed to me by DEA until just before Flores' and Mark Rasmusson's trial. At that time I told him about all the incorrect statements in his report and he indicated he would correct them. I learned during the trial his report was never corrected.

/s/ Jerry Burnett

State of Texas
County of El Paso

Jerry Burnett, personally appeared before me, and being first duly sworn declared that he/she signed this affidavit, and further states that he/she has read the affidavit and the statements contained herein are true.

Sworn to and subscribed before me this 20th of Sept., 1996.

/s/ Edward Wagner
Notary Public
My commission expires on 9/29/99

[Paragraph numbers added to text]

Affidavit of Jerry Burnett

November 13, 1996

1. "I Jerry Burnett state that I reside at 329 Pyrite, El Paso, Texas, 79932. I further state that on or about October 7, 1988 I was in Brownsville, Texas. It was my first trip for RASMARK and I was dispatched there to pick up a load of cargo for delivery to Youngstown, Ohio. I was kept on hold for about an hour and a half, but no cargo ever arrived.

2. When I attempted to leave Brownsville for El Paso, six or seven Border Patrol agents, who stated they were acting as U.S. Customs agents, surrounded the plane and trained automatic weapons and a shotgun on the plane. I was in the plane with one engine running and the other engine was in the middle of the start sequence. My copilot was closing the door at the time the agents came to the pl ane. One of the agents had the two copilots outside the plane and was screaming at me to get out of the plane. The agent put his foot on the door step, and his head in the door way while screaming at me.

3. I shut down the engine that was in the start sequence and attempted to correctly shut down the other engine; however, the agents forced me out of the plane prior to my complying with the proper engine stopping procedures. Since there is fuel in the core of the engine, it must be monitored while shutting down, otherwise there is an extreme fire hazard. The agent that forced the crew and myself off the plane, determined that I was in charge of the plane. A young fat office poked a shotgun into my body and was shaking so much I was afraid he was going to pull the trigger by accident. The agent in charge told me they had Customs authority under some act of 1988.

4. I told them I had no objection if they wanted to search the plane. The agents placed the crew against the wing of the plane and did

a thorough pat down of the crew for weapons. I specifically requested that the fat agent lower the shotgun from my body. All of the guns remained trained upon each crew member. Next the agents requested identification from us. One of the copilots was so nervous that he could not get his ID out, so the agents had him put his hands up and told him to relax. The agents then told him to get his ID and when he put his hands behind his back the agents all pointed their weapons at him. My copilot was so scared that he defecated in his pants.

5. After that, the agents would not touch the copilots wallet, so I asked their permission to get his wallet while his hands remained in the air, which they permitted. The agents then opened and searched the entire plane including the plane's interior, cockpit, and cargo area. Of course, no contraband was found, because we were not carrying any. When the agents decided to leave, the agent in charge stated they were through. I hollered at him that only a few seconds earlier they had their guns pointed at us, and the fat agent had a shotgun poked into my body. The agent in charge told me that he had a confidential source that stated our plane was in Brownsville to pick up a load of drugs. They did not say anything else and then left the area.

6. In the summer of 1990, while I was still employed with RASMARK, I was sent to Del Rio to pick up passengers. Upon arrival in El Paso, my plane was surrounded by three cars of U. S. Customs agents. I know they were U. S. Customs because that is what they told me. I was ordered to go the U. S. Customs ramp to clear customs. I told them I had not crossed the border. One of the agents stated that I had crossed the border at Del Rio and that he had a picture from the radar balloon of my plane crossing the border. I told them I had followed the instrument flight as directed by the Air Traffic Control. I called to my copilot who was still in the right seat of the aircraft and told him to call ATC on the radio to freeze the tapes. I told the agent I wanted to see the pictures of me crossing the border, but he insisted that I must go to customs. By that time one of the customs cars left the scene. I told the agent if he wanted to search the plane we did not have to go to customs and that they could search the plane where we were stopped. At that time, a second custom's car left, which left the agent whollwas doing all the talking by himself.

7. The agent then started to tell me he was going to let me go this time, but if he ever caught me again . . . , [original text] but before he could finish I told him I wanted him to arrest me. Without saying anything else the agent got into his car and left.

8. During the time I flew for RASMARK and Mark Rasmusson I never flew and never saw any of the other pilots fly any illegal contraband including drugs.

/s/ Jerry Burnett

State of Texas
County of El Paso

Jerry Burnett, personally appeared before me, and first being duly sworn declared that he signed this affidavit consisting of four pages, and further states that he has read the affidavit and the statements contained therein are true.

Sworn to and subscribed before me this 13th of November, 1996.

/s/ Edward A. Wagner
Notary Public
My commission expires on 9/29/99

[Paragraph numbers added to text]

Affidavit

1. I, David Chavez, make the following free and voluntary statement to Private Investigators Hank Webb and Ed Wagner at El Paso, Texas on 10/17/96 .

2. I have reviewed a DEA Form 6 dated 9-1-1990 prepared by DEA Agent Steven Perkins. Agent Perkins interviewed me on 8-27-90. I was interviewed regarding information related to my duties as Director of Marketing for Rasmark Jet Charter Service.

3. In paragraph five, page two of the DEA Form 6, a figure of $40,000.00 per month was suggested as the amount of business which Rasmark received from Jesus Flores. I was quoted as stating that $40 ,000.00 per month would make Flores one of Rasmark's largest accounts. I did not suggest the $40,000.00 per month figure. That amount was suggested by Agent Perkins. As best I recall, Mr. Flores chartered a flight about every five or six weeks over an eight or nine month period. His total bill for that period would have probably been $40,000.00 or $50,000.00. That did not make the Flores account a "major account". The major accounts were in the million dollar range. Ford Motor Co. was an example of a major account. That account was in excess of a million dollars.

4. The remainder of the information in the DEA Form 6 was correct. Regarding the incident in May 1992 involving the box of records seized by US Customs Agent Larry Frost, I recall the following details.

5. Deborah Rasmusson phoned me on Saturday May 23, 1992 and asked me to meet her at the Rasmark office. When I arrived at the office, Debbie showed me a box of business records which she stated she found in . . . [correction by Affiant] the accounting office. Mr. Apodaca was an accountant for Rasmark. The cardboard box contained invoices and other business records but nothing else unusual. Debbie

asked me if I know anything about the records in the box. I replied that I did not. She also asked me if Mark Rasmusson and Apodaca were running a second air charter service. I told her that I had no such knowledge. I then left the office and returned home.

6. About 10:30 or 11:00PM that same date, Debbie called me and asked me to pick her up at a Shamrock station on Viscount. I drove to the station in a Rasmark van. When I arrived I saw Ian, Debbie's son, sitting in a vehicle with his hands handcuffed behind his back. Debbie was inside the station with the door locked. Agent Larry Frost and some other agents were standing outside around the station.

7. I went inside the station and talked to Debbie. She was very upset and almost hysterical. She asked me to get the box of records from Agent Frost and then take her and Ian back to the Rasmark office. I went back outside and asked Agent Frost for the box of records. He had a cardboard box which looked like the box Debbie had shown to me earlier in the day at the Rasmark office. Agent Frost told me that I could take Debbie and Ian but that he was keeping the box of records as evidence. I relayed the message from Frost to Debbie and tghen drove Debbie and Ian back to the Rasmark Office.

8. A few days later while working in the Rasmark office, I received a call from Agent Frost. He asked me to talk to Debbie Rasmusson and try to convince her to testify against Mark Rasmusson. He told me that he had offered her a new identity if she would testify. Mark was sitting in the same room and I signaled for him to pick up the phone. When Mark got on the line and identified himself, Agent frost [sic] immediately hung up.

9. After that incident, I had no further contact with Agent Frost.

I have read this statement consisting of 3 pages. The

information contained herein is true and correct to the best of my knowledge.

Signed this 17th day of October, 1996.

/s/ David Chavez

Subscribed and Sworn to before me, the undersigned authority on this the 17th day of October, 1996.

/s/ Edward Wagner
Notary Public in and for the
State of Texas
My Commission Expires: 9/29/99

[Paragraph numbers added to text]

Affidavit of Beverly Enriquez

1. I Beverly Enriquez, state I am currently employed by Lear, formerly known as Favesa, and have been since 1986. Since 1987 I have been a traffic/distribution specialist. I am responsible for the set-up, shipment, and delivery of parts to Ford assembly plants. Shipment is normally handled by land and air carriers. I was also intermittently responsible for the handling of the carriers accounts as was Manuela Barron. Andy Gantkessy was their immediate supervisor. His job included contracting with the carriers, such as Aero Freight and RASMARK. Joe Sudomir was Andy's supervisor and had the final say as to which carrier was used.

2. I am not aware of RASMARK ever double invoicing, providing false invoices or over billing. In addition, I have never heard Manuela Barron state that RASMARK was involved in any of those activities. Ford's/Favesals control over the payables and invoices would have identified and precluded manipulation of the invoices by the carriers; however, RASMARK never engaged in that type activity. Manuela Barron is meticulous in her handling of the invoices and picks up discrepancies of just a few cents. RASMARK's rates were always competitive with the other charter services including Aero Freight.

3. An average charter with a carrier such as RASMARK cost approximately $2,000 to $3,000. The idea that Andy Gantkessy was receiving kickbacks of $5,000 per charter from RASMARK is ridiculous. An expensive charter might be as high as $8,000. I know Andy
Gantkessy to be an honest man and friend of mine. I am not aware of and have no information that Andy received any kickbacks or gratuities from RASMARK or any of the other carrier services. When I told the Ford investigators the preceding they ignored what I told them. I am aware that RASMARK sent out several fax messages selling raffle tickets to support a charity at Providence Hospital. I believe the charity

may have been called Miracle Program, or something like that. The raffle prizes did include a free trip. RASMARK also sold raffle tickets at the Amigo Air Show, and the prizes included free trips.

4. RASMARK also sold space on flights to Las Vegas. On one of these trips Andy had purchased seats for himself and his wife Loretta. For some reason Loretta was unable to attend and Andy invited me. We were responsible for our [sic] the rest of our expenses. I recall working one evening when two Ford management officials, Bob Card and Bob Essad took a similar trip to see a Mike Tyson fight in Las Vegas, with one of the other charter services. This trip took place in 1987 or 1988. My job required that I frequently work at night, including at RASMARK, and I have never seen any one with guns around the RASMARK planes or in the immediate vicinity.

5. When Andy went on medical leave in approximately 1991, Joe Sudomir held over $1,000,000 in unpaid RASMARK invoices. I remember him coming to my desk and taking the RASMARK invoices off my desk and telling me that in the future he would be handling their account. I don't know why he did that. I was being contacted almost daily by RASMARK about the unpaid invoices.

6. I filed a sexual harassment and discrimination suit against Joe Sudomir with Ford. I also know several other women filed complaints or suits against Sudomir with Ford. Andy supported the Favesa employees, including myself, in the statements and actions made against Ford. I believe that Ford used the alleged kickbacks and violations of C-3 policy as a way to get back at Andy because he did not side with the other Ford management officials. Because Andy was a manager they wanted him to side with management even though they were wrong. I was not informed on C-3 policy till way after the trip [original handwritten and initialed].

7. I was also present in 1993 when 6 to 7 agents or law enforcement officers came to Favesa to interview Andy. There were so many of them they didn't fit in Andy's office so they had to go to a conference room. When they finished and Andy came out he looked like he was going to have a heart attack and in a state of shock. Andy said he

was sick and immediately went home.

/s/ Beverly Enriquez

State of Texas
County of El Paso

Beverly Enriquez, personally appeared before me, and first being duly sworn declared that she signed this affidavit, and further states that she has read the affidavit, consisting of three pages, including this page, and the statements contained therein are true.

Sworn to and subscribed before me this 30th of October, 1996.

/s Edward H. Wagner
My commission expires on 9/29/99

[Paragraph numbers added to text]

Affidavit

1. I, John Farah, make this free and voluntary statement to Hank Webb and Ed Wagner. I reside at 4532 North Mesa, El Paso, TX 79912.

2. In 1988 and 1989 I was employed as a dispatcher for Rasmark Jet Charter Service. Sometime in 1988 1 was working at the Rasmark office at the El Paso Airport. Mark and Debbie Rasmussen [sic] had just left in one of the company planes. An individual approached me and identified himself as a federal law enforcement agent. I do not recall which agency he represented. He started asking me questions about Mark and Debbie. He asked me where they were going on the flight which had just departed. He also asked me whether Mark and Debbie were involved in anything illegal. I told him that I didn't know of any illegal activities involving either Marl [sic]or Debbie Rasmussen.

3. I later observed this same individual on several occasions parked near the Rasmark Hanger or in the parking lot near the office.

4. I have read the foregoing statement consisting of 2 pages, each of which I have signed. I fully understand this statement and it is true, accurate and complete to the best of my knowledge and belief. I made the corrections shown and placed my initials opposite each.

5. I made this statement freely and voluntarily without any threats or rewards, or promises of reward de to me in return for it.

/s/ John Farah
Signature of Affiant

State of Texas
County of El Paso

John Farah , personally appeared before me, and being first duly sworn declared that he signed this affidavit, and further states that he has read the affidavit and the statements contained therein are true.

Sworn to and subscribed before me this 18th of Sept. 1996.

/s/ Edward Wagner
Notary Public,
My Commission expires 9-29-99

[Paragraph numbers added to text]

Affidavit

1. I John Gorman state that my address is 8440 Valvedere Suite 5, Sacramento, California 95826, telephone number 916/386-4270. 1 further state that I have been friends with Mark Rasmusson since prior to 1990, and that I have taken a number of vacation trips with Mark to Mexico.

2. On three occasions when returning from San Carlos, Mexico aboard a RASMARK aircraft we were stopped and harassed by United States Customs Service agents. These incidents took place in 1992 and 1993. Two of the three incidents took place-around the September 24th weekend, which is my birthday and coincided with Mark and Deborah Rasmusson's anniversary.

3. On one occasion, U. S. Customs made us wait inside the aircraft for approximately one-half hour before they came out to search the plane. There were no other aircraft on the tarmac while we were waiting. The agents searched our luggage and even turned our golf bags upside down on the tarmac.

4. On a second occasion, the aircraft was stopped and the agents made us wait inside the plane for approximately forty-five minuets [sic] to one hour before they searched the plane. The temperature outside was over one-hundred degrees. Again, there were no other aircraft on the tarmac.

5. During the third incident, which took place on a Monday evening, we were held inside for over two hours waiting for the agents to search the plane. I recall the amount of time we waited because I watched over three-quarters of the Monday night football game. Cheater Bella was also present during this trip. No seizures were made by the Customs agents during these three incidents.

6. Because of the on-going harassment by government agents

when I traveled with Mark Rasmusson, I became very reluctant to fly on any RASMARK [emphasis in original] aircraft.

/s/ John Gorman

State of California
County of Sacramento

John Gorman, personally appeared before me, and being first duly sworn declared that he signed this affidavit, and further states that he has read the affidavit and the statements contained therein are true.

Sworn to and subscribed before me this 11th day of October, 1996.

/s/ Hilli K. Simonds
Notary Public
My commission expires on 3/15/2000

[Paragraph numbers added to text]

TWO HANDWRITTEN STATEMENTS OF

DAVID JACKSON

[Statement 1]

1. On June 16, 1993, U.S. Customs Agents performed a surprise armed raid on our Learjet N25TK at Dallas Love Field. We were on a routine cargo flight from Douglas, AZ to Ocala, FL with a fuel stop at Dallas.

2. We landed on runway 13R and when we turned off on to the taxiway, a Dallas Police car drove towards the aircraft and blocked our path. Within a couple of minutes a U.S. Customs Citation Jet landed and taxied behind us, and a helicopter with searchlight began hovering above the aircraft. Next a van pulled up in front of the aircraft. Several customs agents and customs police exited and surrounded us, all with weapons drawn and pointed at us. Ground control informed us that these people wanted us to shut the plane down and deplane. My co-pilot exited first and was told to kneel down and was handcuffed. I exited and was told to kneel down with my ankles crossed and hands on my head. Anders was put in the van. The agents asked me what was in the plane. I told them we just had three boxes of cargo and asked if they would like to see the Bill of Lading, which they inspected. I was then told to taxi the plane in trail of the Dallas Police car. One of the agents rode in the plane with me. Their plane was parked at Jet East. I asked the agent in the plane why we were being raided. He responded that they had received some information that they needed to check out. I asked if he could tell me who gave them the information, but he said he couldn't tell me.

3. After the plane was shut down, another agent asked if I would sign a consent to allow them to search the aircraft. I asked what they would do if I refused. She told me that then we would be detained overnight until they could obtain a search warrant the following day. I

explained that we were carrying time sensitive cargo and that amount of delay would ...[correction in original] be unacceptable. I therefore signed the consent under duress.

4. They inspected the aircraft documents, my airman certificate, medical certificate and my resident alien card and made photocopies of these.

5. The aircraft and cargo was searched thoroughly, including inside the inspection hatch ("hell-hole"). Dogs were used to sniff inside and around the aircraft. The boxes of cargo, which contained seat belts were then sniffed. One dog chewed a hole in one box and began chewing on the seat belts, until an agent restrained it.

6. An agent asked me if we were hauling drugs, had ever hauled drugs, or if I knew of anyone in our company that ever had. I told him no.

7. ... [correction in original]. She [the agent] expressed surprise that a Learjet was being used to haul such a small quantity of cargo and asked me why the customer did not send the freight via overnight parcel service. I told her she would have to call Allied Signal, the customer, to get an accurate answer, but that I understood it to be extremely time sensitive freight. She also indicated that she was suspicious that we were flying at night and asked me why this was so. I explained that it is very common for such cargo to be hauled overnight.

8. The search being complete, we were released after a delay of about one hour.

[end of statement 1]

[Statement 2]

9/1/93 10:50 a.m.

Bill Inselmann	Leo Cunaman (214)655-5400
Dept of Justice	F.A.A.

13:15 BWI Signature Flight Support

1. Two agents identified themselves to me as agents of the U.S. Dept. of Justice. I asked what branch they were with. They told me DEA. They requested a routine ramp inspection of the aircraft documents per FAR 61. I understood them to mean they wished to search the aircraft and asked if they had a search warrant. They said they didn't need one. I called Rasmark's office to inform them of the inspection . The agents, sensing resistence from me, called the BWI FSDO and requested that an FAA inspector come to Signature [a FBO (Flight Base of Operation)], and help with the inspection. The two agents proceeded with me to the plane and inspected the aircraft registration, airworthiness [certificate], radio station license, airmen certificate, medical [certificate] and my resident alien card. The FAA inspector looked around inside the aircraft and performed an inspection of the AFM, MEL, OPS manual, weight and balance from the previous flight (EVV - BWI) and checked the aircraft. He also inspected the co-pilot's airmen certificate, medical and resident alien card.

2. I commented that I didn't mind the FAA inspector looking inside the aircraft, but if the DEA agents wanted to I wanted to see a search warrant. [After] [t]he inspection complete, one of the agents parted with the sarcastic words "I hope you finish law school soon".

[end of Statement 2]

/s/ DAVID JACKSON

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

MARK B. RASMUSSON, ET AL.,	§	CIVIL ACTION:
	§	
PLAINTIFFS,	§	EP-95-CA-475-F
	§	
vs.	§	
	§	
LAWRENCE E. FROST, ET AL.,	§	
	§	
DEFENDANTS.	§	
	§	

AFFIDAVIT OF DONALD MORRIS JOSEPH

STATE OF ARIZONA §
MARICOPIA COUNTY §

On this day personally appeared DONALD MORRIS JOSEPH who after being duly sworn stated upon his oath and belief as follows:

1. "My name is DONALD MORRIS JOSEPH, I am over the age of 21 years, and I am competent in all ways to make this oath and affidavit. I have personal knowledge of the facts and circumstances set forth below.

2. "I have read the Application and Affidavit for Search Warrant that was prepared by Agent Lawrence E. Frost on November 19, 1993, for the Rasmusson's residence located at 11157 Leo Collins Drive, El Paso, Texas and the Affidavit of Agent Frost for the search of the Rasmark offices. Agent Frost alleges that I made certain statements to Mr. Steve Thorn of Taos, New Mexico at a wedding reception at the Holiday Inn. Most of the Mr. Thorn's statements imputed to me are completely false and were made by him with malice against me and Rasmark.

3. "First on page 14 of the Affidavit for search of the Leo Collins residence, the wedding reception was not at the Holiday Inn. I was staying at the Holiday Inn and the wedding reception was at a private residence.

4. "On page 15 states that I was under the influence of alcohol which is true. However, Mr. Thorn was also under the influence of alcohol.

5 . "Mr. Thorn states that members of his family had invested in an air freight company in El Paso which he identified a Aero Freight. Later a friend of mine, Jerry Davis who has known Mr. Thorn for over 25 years, told me that the owner of Aero Freight was his twin sister Gail Beech.

6. "Agent Frost alleges that Mr. Thorn stated that I was obnoxious and stated that Rasmark was going to run all other air charters in El Paso out of business. This is completely false. I stated to Mr. Thorn that I worked for Rasmark in the capacity of Dispatcher and Sales Manager and that I also did collections from time to time.

7. "Agent Frost alleges that I stated to Mr. Thorn that Mark Rasmusson and I "[w]ere flying controlled substances and drug money 'all over the place' and that DEA was aware of their activities but can't catch them. 'Johnson repeated that DEA will never catch us 3 or 4 times during the course of the conversation with Mr. Thorn. This is absolutely 100% false.

8. I stated to Mr. Thorn that Rasmark was the dominated jet charter company in El Paso. I stated to Mr. Thorn that Customs has been harassing us by stopping and searching our planes without any reason or cause. I stated to Mr. Thorn that Customs treat us as if they believe we are continually flying contraband, money or something illegal. Customs repeatedly detain our aircraft, detain our crews, detain our freight or passengers and bring out the dogs and completely searched the contents of the aircraft be it freight or luggage. They have never found anything and they never will. I stated to Mr. Thorn that the reason that we are the leading jet charter company is that we out perform all the

others and get the job done cheaper.

9. "Agent Frost states that Donald Joseph had been observed accompanying Deborah Rasmusson on flights to Wickenburg, Arizona. I rebut any implication of illegal activity in the context of Frost's statement. I have relatives that live in Wickenberg, AZ. On their way to the Reno Air Races, Mark and Deborah Rasmusson dropped me off in Wickenberg on a Friday and returned on Sunday to pick me up and we returned to El Paso for work on Monday. Mark and Deborah Rasmusson were flying their Falcon jet on that trip.

SIGNED ON THIS 15 DAY OF JULY, 1996.

/s/ DONALD MORRIS JOSEPH, AFFIANT

SUBSCRIBED AND SWORN TO BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS 15th DAY OF JULY, 1996.

/s/ NOTARY
NOTARY PUBLIC IN AND FOR THE
STATE OF ARIZONA
MY COMMISSION EXPIRES: Jan. 31, 1997

[Paragraph numbers added to text]

STATEMENT OF IAN MAYE

1. My name is IAN MAYE. I wish to make the following statement to Mr . Hank WEBB who is a Private Investigator in the employ of Attorney Sandra Sheppard.

2. On May 23, 1992 I went to the Rasmark office with my Mother, Deborah Rasmusson. I think it was late afternoon. When we got to the office my Mom found a box of records and became very upset. Shortly after we arrived there, officer George Salas showed up.

3. He started telling Mom that she was in great danger that my Step-Father, Mark Rasmusson, was going to kill her. Officer Salas convinced Mom and me to go with him in his car. He told Mom to bring her pistol. Officer Salas drove us to a bank. I think there were some agents waiting at the bank.

4. We left the bank, still in officer Salas' car and he took us to an office where there were several agents.

5. The agents separated Mom and me. Three or four agents took me into a room and started talking to me. They were very friendly and "buddie-buddie". They asked me lots of questions about my Step-Father, Mark Rasmusson. I stayed in the room with the agents for a long time, maybe over three hours.

6. After we had been there for a long time, Mom came out and told me that the agents wanted her to sign some papers so that they could protect her. I told her not to sign anything.

7. When Mom told the agents that she wouldn't sign anything, the attitude of the agents changed. They became aggresive and abusive.

8. One of the agents told me, "You think you're a 13 year old

lawyer. You're just a 13 year old punk - asshole." We, Mom and I wanted to leave but the agents wouldn't let us. Mom pulled the fire alarm and the agents took us back into the office for a few more minutes. Mom asked for a ride back to Rasmark but the agents told us to just leave.

9. We left the building and Mom carried the box of records. We walked to a nearby store and mom hid the box behind a transformer.

10. In a few minutes the same agents arrived. Mom was in the store and the agents were trying to get her to come outside. When she refused to go outside, one of the agents grabbed Mom's arm. Mom started screaming and I tried to help her.

11. Another agent grabbed me from behind, twisted my arm and choked me until I passed out. I fell on the pavement and they handcuffed my hands behind my back.

12. One of the agents took my Mom to where the box was hidden and the agent took the box from her.

13. I was put in the back seat of one of the agents' cars. After the agents got the box of records, they released me and my Mom.

14. A Rasmark employee came and picked us up and took us back to the Rasmark office.

15. I have read this statement consisting of page and three other pages. The information contained herein is true and correct to the best of my knowledge.

/s/ IAN MAYE 4/2/97

/s/ Henry A. Webb 4/2/97
Witness

I swear that I interviewed IAN MAYE on April 2, 1997. He furnished the information contained in the forgoing handwritten and signed statement. Mr. Maye read the statement and approved it for correctness prior to signing it.

SIGNED THIS THE 3rd DAY OF APRIL, 1997.

/s/ Henry A. Webb
Signature of Affiant

State of Texas
County of El Paso

Hank Webb, personally appeared before me, and being duly sworn, declared that he signed this affidavit, and further stated that he read the affidavit and the statements contained therein are true. Sworn to and subscribed before me this 3rd day of April, 1997.

/s/ Dolores Diaz Olague
Notary Public
My commission expires 5/5/99.

AFFIDAVIT

HANDWRITTEN STATEMENT

I, Julio Parra, state that I reside at 4839 Tetons, El Paso, Texas 79904, telephone number 757-9102. I have been employed at Rasmark since approximately 1989. Sometime, in approximately 1993 or 1994 government agents came to the Rasmark office at Julie's and questioned the employees of Rasmark. The agent that questioned me was Hispanic. I do not recall his name or agency. He asked me if I ever saw anyone with guns guarding the Rasmark aircraft, and I told him no.

During a later incident one of the pilots was taxing one of the falcons and three car loads of agents pulled up to the aircraft. I believe they were FBI agents. Some of the agents started questioning me, and asked if I ever saw large quantities of money loaded on the aircraft (I had not). I told them I had nothing to say to them and they told me I could talk to them at Rasmark or their office downtown. They also asked me where Mark and Deborah Rasmusson were (I believe they were in the Cayman Islands). I again told them I had nothing to say and they left. JP

I have read the foregoing statement consisting of 1 pages, each of which I have signed. I fully understand this statement and it is true, accurate and complete to the best of my knowledge and belief. I made the corrections shown and placed my initials opposite each.

I made this statement freely and voluntarily without any threats of rewards, or promises of reward having been made to me in return for it.

/s/ Julio Parra

Subscribed and sworn to before me this 17th day of September, 1996 at El Paso, Texas, El Paso County

/s/ Edward Wagner
Notary Public

My commission expires 9/29/99

/s/ H. Webb
Witness

Affidavit of Jack Quarles

I Jack Quarles state that I am employed at the El Paso Airport Hilton, telephone # 778-4241. I am a friend of and have known Mark Rasmusson for several years. In approximately 1993, whenever Mark was going through his divorce, I allowed him to stay at the Hilton with a comp or discounted room rate. While staying at the Hilton, he used the name of a friend so his wife could not locate him. I eventually had to ask him to leave because of harassment by law enforcement officers. I was personally contracted by individuals who identified themselves as Customs agents on 2 or 3 occasions. One of the agents was an Anglo, tall, with a moustache. They told me they were investigating Mark and know he was staying at the Hotel, but that he was not registered in his name. Because the agents started questioning other employees and hanging out in the lobby, I asked Mark to leave. I was affraid theymight raid the hotel. One of the employees they questioned was Lee Andrea now employed at the Emerald Springs Country Club.

I have read the foregoing statement consisting of 1 pages, each of which I have signed. I fully understand this statement and it is true, accurate and complete to the best of my knowledge and belief. I made the corrections shown and placed my initials opposite each.

I made this statement freely and voluntarily without any threats or rewards, or promises of reward having been made to me in return for it.

/s/ Jack Quarles

Subscribed and sworn to before me this 19th day of September, 1996, at Emerald Springs Country Club.

/s/ Edward H. Wagner
Notary Public

/s/ Henry A. Webb
Witness

[Paragraph numbers added to text]

Affidavit

1. I Edward H. Wagner state that Adrian Varela resides at 813 Santa Barbara, El Paso, Texas, telephone number 915/598-3982. 1 further state that I went to Mr. Varela's residence at approximately 2:00 p.m. on September 16, 1996 and talked with Mr. Varela's wife. Mr. Varela telephoned me later that evening per my request. In response to questions by me Mr. Varela stated the following:

2. While he was employed at RASMARK, he was contacted by a law enforcement officer at his residence. The officer wanted him to sign a false statement regarding Mark Rasmusson, which he refused to do.

3. Mr. Varela then stated he did not want to make any other statements. He also stated he would not sign any statements or give any additional information or help anyone unless he was given a subpoena. The telephone conversation was terminated at that time.

/s/ Edward H. Wagner

State of Texas
County of El Paso

Edward H. Wagner, personally appeared before me, and being first duly sworn declared that signed this affidavit, and he further states that he has read the affidavit and the statements contained therein are true.

Sworn to and subscribed before me this 27th of September, 1996.

/s/ Dolores Diazolague
Notary Public
My commission expires on 5/5/99

AFFIDAVIT

HANDWRITTEN STATEMENT

I, Hector Sambrano, state that I reside at 1530 George Dieter, El Paso, Texas 79936, #13N. I further state that I am a marketing and dispatch specialist for Rasmark and have been since July 4, 1994. My primary job is to obtain new clients/customers for Rasmark. Since my employment, Rasmark has been turned down by substantial potential customers because of Mark Rasmusson's alleged past problems with the government.

When I went to Lear Seating, formerly Favesa (a Ford division) I talked to Jim Wood, the plant manager, who alluded to Mark's previous problems (without being specific) and decided not to do business with Rasmark.

In a second instance I contacted Ruben Smith at EWD (a Chrysler division), who also brought up Mark's prior problems with the government and also declined to do business with Rasmark. Ruben Smith also told me that Gail Beech at Aero Freight had talked to someone at Chrysler Pentastar about Mark's "drug deals." H.S.

/s/ Hector Sambrano

I have read the foregoing statement of 2 pages, each of which I have signed. I fully understand this statement and it is true, accurate and complete to the best of my knowledge and belief. I made the corrections shown and placed my initials opposite each.

I made this statement freely and voluntarily without any threats or rewards, or promises of reward having been made to me in return for it.

/s/ Hector Sambrano

Subscribed and sworn to before me this 17th day of September, 1996, at El Paso, Texas, El Paso County.

/s/ Edward Wagner
Notary Public

My commission expires: 9/29/99

/s/ H.Webb
Witness

[Paragraph numbers added to text]

Affidavit

1. I Arturo Vargas state that my business is located at 432 N. Resler, telephone number 915-587-0207. I further state I have reviewed excerpts from . . . [correction initialed in original] a USCS Report contained in an affidavit for a search warrant by United States Customs Service Agent Larry Frost, which is attached to and part of this affidavit.

2. I never told the agents RASMARK was double invoicing and altering the dollar amounts and cargo on invoices. What I did tell the agents was that in some instances, if a customer or RASMARK lost an invoice, a new invoice would be prepared to replace it. Thus, a second invoice is generated for exactly the same amount. The dollar amount and cargo would not be altered.

3. My duties and responsibilities did not include handling cash receipts. What I discussed wsith the agents was the petty cash fund. I was in charge of the petty cash fund, which was used for miscellaneous office expenses and for the pilots, a normal business procedure. That is what the referenced "cash receipts" related to, not the daily business receipts.

4. The agents also made reference to Mark Rasmusson keeping computer records which were not accessible to the other office computers/network. The truth is I had not idea what Mr. Rasmusson kept on his computer, and had no reason to ask.

5. I have no recollection concerning the agents statement that Albert Apodoca told me Deborah Rasmusson admitted not paying taxes on $100,000 of income in 1990 or 1991. What I did discuss with the agents was a potential discrepancy with the RASMARK accounts receivable. The discrepancy was the result of preparing a replacement or second invoice for a lost or missing invoice. If the original

receivable was not deleted from the computer it would cause a discrepancy/increase in the accounts receivable. However, this would not affect income because RASMARK was a cash basis corporation.

6. It is true that Deborah Rasmusson accused me of being an FBI agent. I know this from David Chavez. It is also true that Deborah Rasmusson would not give me access to corporate and personal bank records because she was suspicious of me. While employed at RASMARK I never observed or had any reason to believe there was any illegal activity being conducted. I was dismissed from RASMARK by Deborah Rasmusson over $20.00 missing from the petty cash fund. When I was interviewed I told the agents I had been dismissed. I was never shown a copy of the United States Customs service report to verify or correct the statements attributed to me and later used by agent Frost in his affidavit for a search warrant.

/s/ Arturo Vargas

State of Texas
County of El Paso

Arturo Vargas, personally appeared before me, and being fist duly sworn declared that he signed this affidavit, and further states that he has read the affidavit and the statements contained therein are true.

Sworn to and subscribed before me this 3rd of February, 1997.

/s/ Edward Wagner
Notary Public
My Commission expires on 9/29/99

[Paragraph numbers added to text]

Interview of Blanca Vasquez

1. Blanca Vasquez, furnished the following information to Private Investigator Hank Webb on Aug 26, 1996.

2. She is the Sanitation Superintendent for the City of El Paso.

3. In order for a law enforcement agency to retrieve solid waste(garbage) from a private residence, the following actions must be taken.

4. The law enforcement agency must submit a request letter to her office advising her of the address involved, the length of time for which the solid waste is to be retrieved, and the name of the law enforcement officer who will actually retrieve the solid waste. If she, Vasquez, approves the request, she refers the request to the appropriate Sanitation Department Supervisor for the area where the address is located.

5. The Supervisor then contacts the designated law enforcement officer and arranges for the actual pick up of the solid waste. The normal procedure is for a Sanitation Department employee to pick up the solid waste from the residence in question and deliver it to the law enforcement officer some distance away from the residence.

6. The law enforcement request letters are kept on file for one year and then destroyed. There is one central file for all letters. She checked the file for the address of 11157 Leo Collins and found no law enforcement letter requesting to pick up solid waste at that address.

7. No law enforcement officer or other person would be allowed to go onto private property to pick up solid waste. A city ordinance, (Ord. 8652, Section 11-20) states that "No person other than an authorized collection agency shall collect or transport any solid waste

or open or disturb the contents of any solid waste storage container".

8. In the event it should become necessary for anyone to testify regarding Sanitation Department policy, She, Vasquez, would be the appropriate person to subpoena.

9. Ms. Vasquez was recontacted and requested to review the above information for correctness and then to sign an affidavit. She advised that the El Paso City Attorney's office instructed her not to sign any statement until she receives a court subpoena.

10. I certify that the above information attributed to Blanca Vasquez on Aug 26, 1996 was furnished to me and that I accurately recorded the information to the best of my ability.

/s/ HENRY A. WEBB

Subscribed and sworn to before me, the undersigned authority, on this twenty-eighth day of october, 1996.

/s/ Edward Wagner
Notary Public
In and For the State of Texas
My Commission expires: 9/29/99

[Excerpt: (9.04.010 omitted)]

Article 1. General

9.04.020 Responsibility for compliance.

A. The owner, agent and occupant of any residence, business establishment. industry, institution or other premises shall be jointly and severally responsible for the sanitary condition of and for proper storage, containment and provision for collection of solid waste generated on or by or accumulating on or at such residence, business establishment, industry, institution or other premises in accordance with the provisions of this chapter.

B. Any person, company or corporation who undertakes to collect, transport or dispose of solid waste shall be responsible for compliance with the sections of this chapter. (Ord. 8652 (part), 1986: prior code § 11 -2).

AN ORDINANCE AMENDING CHAPTER 11 (SOLID WASTE MANAGEMENT), OF THE EL PASO CITY CODE. THE PENALTY BEING AS PROVIDED IN SECTION 11-39 OF THE EL PASO CITY CODE.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That Chapter 11 (Solid Waste Management) of the El Paso City Code be amended as follows:

ARTICLE 1. GENERAL [Section 11-1 - Section 11-19 omitted]

Section 11-20. Unauthorized Collection and Transportation Prohibited.

No person other than an authorized collection agency shall collect or transport any solid waste or open or disturb the contents of any solid waste storage container.

[Paragraph numbers added to text]

Affidavit

1. I, Larry Vaughn, make the following statement to Hank Webb and Ed Wagner. I reside at 945 Mesa Hills, El Paso, TX 79912.

2. I am the Director of Maintenance for Rasmark Jet Charter, Inc. and have been so employed for about two and one half years.

3. When I was hired by Rasmark in the Spring of 1994 , practically all the FAA required maintenance manuals had been seized by U.S. Customs officers. These records included engine log books, airplane log books, and other maintenance logs needed to properly supervise the maintenance of the Rasmark air fleet.

4. It was my understanding that the logs had been seized for possible use in a criminal case involving Mark and Debbie Rasmussen. Since all charges had been dismissed against the Rasmussens [the Rasmussons were never charged with any crime] I attempted to obtain the log books from U.S. Customs in order to comply with FAA regulations. During the time the log books were in the possession of the federal agents, the Rasmark Company received permission from FAA to utilize temporary log books. This permission was obtained through FAA inspectors Mannie Lopez or Dale Hunter. Since using the temporary logs was expensive and was not acceptable over a long period of time, I felt that I needed to obtain the original logs as soon as possible. Either Mannie Lopez , Dale Hunter, or both, contacted U.S. Customs and requested that the aircraft logs be returned to Rasmark since they were no longer needed as evidence. This request was denied. I determined that Larry Frost, a U.S. Customs Agent, was the individual who had control of the records and would not release them.

5. I phoned Mr. Frost, introduced myself, and explained to him that it was very important that the aircraft records be returned to Rasmark. He stated that he wanted to meet me and asked me to come over to his office and meet him. I drove over to the office but could not

get into the building. I continued contacting Mr. Frost and was finally able to meet him in the parking lot of the building where he worked.

6. I again explained to him why it was so important that I have the original FAA aircraft logs to use in supervising the maintenance of the Rasmark aircraft. Mr. Frost started asking me questions about Mark and Debbie Rasmussen and attempted to convince me to become an informant for him. He indicated that he would not release the aircraft records to me. He stated that they were still needed as evidence and could not be released. As I started to leave, he told me to tell Mark Rasmussen that he, Frost, was not interested in Mark Rasmussen, but just wanted his help in catching a "bigger fish".

7. I continued to contact Mr. Frost and request that the records be returned to Rasmark. He finally told me to write a letter to him and request each item by inventory number. I had the necessary letter prepared and delivered it to Larry Frost. He accepted the letter and stated that he would consider returning the aircraft logs. I met with Mr. Frost on several occasions and on every occasion he asked me numerous questions about Mark Rasmussen. He also continued his efforts to recruit me as an informant.

8. On one occasion, after delivering the letter of request to Mr. Frost, he asked me to meet him in the parking lot at his office. I met his in the lot as he requested. While we were talking, a female agent arrived in a pick-up truck containing several cardboard boxes in the back. Mr. Frost told me that the boxes in the back of the pick-up contained the aircraft logs which I had requested. I was allowed to take possession of the eight or nine boxes. These events transpired on 6-4-94. When I returned to my office and reviewed the items which had been returned, I discovered that some items were still missing.

9. I phoned Mr. Frost the following morning and advised him about the missing items. He stated that he had returned everything in his possession and he had no information regarding the missing records. One of the critical items which was never returned was an aircraft engine log book.

10. The loss of this log book and having to perform maintenance operations using temporary logs caused an undue hardship and considerable unnecessary expenses on the Rasmark Co. Needless hours were spent trying to reconstruct records in order to comply with FAA regulations. Countless hours were spent writing letters, making phone calls, and contacting other maintenance contractors in an effort to reconstruct maintenance logs to satisfy FAA regulations. Rasmark was forced to operate on Temporary logs from November 1993 to June 1994 while our records were being held by U.S. Customs.

11. I have read this statement consisting of 4 pages, each of which I have initialed. I fully understand this statement and it is true, accurate and complete to the best of my knowledge and belief. I have made any necessary corrections and have initialed each correction. I made this statement freely and voluntarily without any threats, rewards, or promises of rewards having been made to me in return for it.

/s/ Larry Vaughn
Signature of Affiant

State of Texas
County of El Paso

Larry Vaughn, personally appeared before me, and being first, declared that he signed this affidavit, and further stated that he read the affidavit and the statements contained therein are true.

Sworn to and subscribed before me this 18th day of Sept., 1996.

/s/ Edward H. Wagner
Notary Public
My commission expires on 9-29-99

/s/ Henry A. Webb
Witness

Affidavit

I Chris Yarber . . . [correction in original] state that I work at International Transmissions, 9576 Dyer, El Paso, Texas, telephone # 751-3447. My home telephone # is 593-6821. I further state I have known and been friends with Mark and Deborah Rasmusson approximately seven years. In 1990 or 1991 I flew with Mark & Deborah to Vancouver . . .[correction in original] (BC)/Canada. Mark and Deborah were going on a cruise, leaving from that area. I was with a friend named Felix Pedregon. Mark, Deborah, Felix and I left the airport. Felix and I returned to airport and the plane approximately four hours later. We had flown to Vancouver in one of the RASMARK Lear Jets. Upon returning Felix and I were strip searched by Canadian authorities. They also asked me "where are the drugs." The plane was also searched and the RASMARK pilots strip searched. To this day, whenever Mark and I are returning/flying in from Mexico his planes are always searched by U.S. Customs.

I have read the foregoing statement consisting of 1 pages, each of which I have signed. I fully understand this statement and it is true, accurate and complete to the best of my knowledge and belief. I made the corrections shown and placed my initials opposite each.

I made this statement freely and voluntarily without any threats or rewards, or promises of reward having been made to me in return for it.

/s/ Chris Yarber

Subscribed and sworn to before me this 24 day of Sept, 1996 at El Paso, Texas.

/s/ Edward Wagner
Notary Public
My commission expires: 9/29/99

/s/ Henry Webb
Witness

Supreme Court, U.S.
FILED

981345 FEB 8 - 1999

OFFICE OF THE CLERK

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

MARK B. RASMUSSON, et. al.,

Petitioners,

v.

LAWRENCE E. FROST, et. al.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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APPENDIX D
Respondents' Depositions Excerpts

SANDRA J. SHEPPARD, Esq.
Counsel of Record
6915 Boeing Drive
El Paso, Texas 79925-1107
(915) 772-4616

Attorney for Petitioner

APPENDIX D

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IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF TEXAS

EL PASO DIVISION

MARK B. RASMUSSON,	*		
ET AL	*		
	*		
VS.	*	CIVIL ACTION:	
	*	EP-95-CA-475-F	
LAWRENCE E. FROST,	*		
ET AL	*		

VIDEOTAPED DEPOSITION OF

LAWRENCE E. FROST

January 10, 1997

Is there any reason at all why you cannot testify accurately here today?

A No.

Q Okay. Do you have any questions about what I've just told you or about this deposition?

A No.

Q Okay. Mr. Frost, have you ever been a subject of a complaint alleging abuse of authority, excessive force, intimidation, falsification of records or other violation of U. S. Customs policy or regulation?

MR. ROBINSON: Objection. The purpose of this deposition is to elicit facts pertinent and relevant to the issue of qualified immunity.

His past conduct is not relevant to the incidents that -- that are alleged in the complaint.

MS. SHEPPARD: Are you instructing the witness not to answer the question?

MR. ROBINSON: That's correct.

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Q (By Ms. Sheppard) Mr. Frost, prior to March of 1992, had you attended any law enforcement school for document analysis and drug smuggling?

A As I understand it, you want to know if I have attended schools on document analysis --

Q Right.

A -- or drug smuggling?

Q Yes.

A I have no expertise in document analysis. I was not trained there. I have attended training in drug smuggling.

Q Okay. Have you received any training in document -- document analysis related to money laundering, mail fraud, kickback schemes or tax evasion?

A No.

Q Okay. Now, when you first arrived in El Paso, Texas, did U. S. Customs Service have an active case on Mark Rasmusson and the other plaintiffs?

A Yes, they did.

Q Okay. And what -- who was the case agent?

A John Peterson.

Q John Peterson. And what was the date of the investigation, previous investigation?

A I have to clarify that. It's not a previous investigation. It's the same investigation.

Q Okay. And when did this investigation begin?

A It would have been late 1989.

Q Okay. And what was the basis of that investigation?

A The reports indicate that there were allegations of money laundering and currency smuggling.

Q Okay. And what -- did you review all of the case files that U. S. Customs

Service had on Mark Rasmusson and Rasmark and Deborah Rasmusson?

A I reviewed all of the files that were available to me. I don't know of any others.

Q Okay. And what factual basis did you find those files to support allegations of money laundering or drug smuggling or tax

evasion or kickback scheme against Mark Rasmusson, Deborah Rasmusson, Andrew Gantkessy and Rasmark?

MR. ROBINSON: I'll object. I think that's a very overly broad, open-ended question. To ask every fact that he had to substantiate what you just said

said --

MS. SHEPPARD: Okay.

MR. ROBINSON: -- is a virtual impossibility.

Q (By Ms. Sheppard) Okay. When -- when you opened up the financial task force case, then it's just a continuation of the case that John Peterson started in 1989?

A I didn't open a case.

Q Okay. So what did you do?

A I was assigned a case that was already open.

Q Okay. Now, when the -- explain how the financial task force came into the picture.

A I don't understand what you want.

Q Okay. When was the financial task

force formed?

A I believe that would have been approximately March of 1992, as I recall.

Q Okay. And what was the purpose of the financial task force?

A To conduct investigations into complex money laundering and conspiracies.

Q Okay. And who made the decision to include Mark B. Rasmusson and the other plaintiffs in this investigation?

A In the financial investigation?

Q Yes.

A John Peterson, the original case agent.

Q Okay. Did you do a background check on Mark B. Rasmusson and the other plaintiffs?

A You'll have to clarify what you mean by "background check".

Q Okay. Did you check all of the law enforcement databases? Do you -- did you an EPIC search?

A Yes, I did.

Q Okay. And what information were you able to obtain from the EPIC search?

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A I don't recall specifics. I don't have the case files here with me.

Q Okay. What date did you perform that EPIC search?

A I don't recall.

Q Was it performed prior to March of 1992?

A No, ma'am.

Q Okay. Did you check with the other law enforcement agencies to see what information they had in their databases concerning informants that might have had contact with Mark B. Rasmusson or any of the other plaintiffs?

A Which other agencies are you referring to?

Q FBI, DEA, DPS, El Paso Police Department, El Paso Sheriff Department, INS, FAA.

A I requested all participating agencies to provide any information they had or informant debriefings.

Q Okay. Did you attempt to make a determination of Mark B. Rasmusson is known source of money; such as his salary, business

income, loans, gifts, inheritances to see if they justify his lifestyle?

A Yes, we did.

Q Okay. And what information did you find?

A I did not personally perform that networth analysis that you're referring to.

Q Who performed that analysis?

A It would have been a Mr. Hector Barrera and a couple of different agents from the Internal Revenues Service.

Q Okay. And when was that analysis performed?

A It was a continuing analysis during the years 1992 and 1993.

Q You said "continuing analysis"?

A Correct.

Q It began in 1992?
A I believe so.
Q Okay. Do you know approximately what month?
A No, ma'am.
Q Okay. And did you search -- did you or did you have anyone else on your behalf search the probate records to prove or

disprove Mr. Rasmusson's inheritance?
A Yes, we did, to the extent possible.
Q What did you find?
A I traveled to Sacramento, California, obtained what documents were available when I was there. The probate was very confusing and disarrayed. And we had to

order some records, which we never received.

Q Okay. Did the records show that he, indeed, had received an inheritance?

A Yes, they did.

Q Now, after -- excuse me. After searching all of these databases, the EPIC databases, all of the other agencies that you consulted with, what information did you find that led you to believe that Mark B. Rasmusson was engaged in or engaging in between June 1991 and March of 1992 drug smuggling or money laundering?

A As I stated previously, I don't have the case file. I cannot articulate specific allegations at this point.

Q Okay. Did you read any documents prior to coming to this deposition?

A I looked through the search warrant affidavits for the residence and the business.

Q Okay. And did you -- and from reading your affidavits to the search warrants -- well, let's go back to my original question.

Between June 1991 and March 1992, did you uncover any facts that support that Mark B. Rasmusson or any of the plaintiffs were connected with any type of drug smuggling or money laundering activities?

A Between June 1991 and March 1992?

Q Yes.

A I was not investigating them at that time, ma'am.

Q Okay. You said you checked the case file. Did you find any factual basis in the case files of John Peterson or any of the other Customs agents participating in the investigation, did you find any facts that showed between June 1991 and March 1992 that Mark B. Rasmusson and other plaintiffs were participating in drug smuggling or money laundering?

A I don't recall specific allegations relating to date, per se.

Q Okay. Now, you stated in your affidavit you read all of the DEA case files, all of the criminal trial transcripts from the previous charge against Mark Rasmusson.

Now, the criminal trial transcript

indicates that Attorney Richard Escra in his opening statement talked about Mark B. Rasmusson's inheritances, the early beginning of his business in Nevada and Michigan. Did you or any member of the task force attempt to corroborate any other details that -- pertaining to the inheritance, besides what you already told me?

A None, other than interviews with people that had known Mr. Rasmusson for some time.

Q And who did you interview?

A I don't recall specifically at this time. I'd need think the reports of investigation by the agents that did the interviews.

Q Okay. Now, the DEA case files indicate that the DEA subpoenaed numerous

financial records from Albert Apodaca, the CPA for the Rasmussons and Rasmark. Did you or any member of the task force review those financial records?

A I don't recall if we reviewed the records the DEA obtained in the original investigation.

Q Okay. So are you saying that you did not review all the records or are you saying you did not have the records -- a document analysis done of the records?

A I'm saying that I do not know if the records from the original DEA investigation were used in the analysis or not.

Q All right. Now, you were the case agent assigned for the financial task force. Isn't that correct?

A That is correct.

Q Did you instruct anyone to review those documents and do a document analysis?

A As I've stated before, I do not recall if the original documents from the DEA case that were taken from Apodaca and Jensen were used in our analysis or not.

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Q Okay. Prior to launching your task force investigation, did you or anyone on behalf of the task force or U. S. Customs do an asset investigation of Mark B. Rasmusson?

A Prior to the initiation of the task force investigation?

Q Yes.

A I don't know if Mr. Peterson did that or not. I don't recall any record of it.

Q Okay. Did you do an asset investigation, you or did you instruct anyone else on your behalf to do an asset investigation?

A Yes, I did.

Q Okay. And who did you instruct to do the asset investigation?

A That task would have been assigned to Intell Specialist, Lee Whitest and Auditor Hector Barrera. And I believe Internal Revenue Service special agents also participated in that.

Q Okay. And as part of that asset

investigation, did you check the -- did they check the UCC filings to see what -- if any financing records were available to

the investigation.

Q Okay. Now, what was that agent's name?

A There was a change at some point, but the original agent assigned, as I recall, was Jack Geller.

Q Okay. Did the FBI ever furnish a full-time special agent to work on your task force?

A Yes, they did.

Q Okay. And who was that?

A Special Agent Joe Acosta --

Q All right.

A -- during the time that -- and then Special Agent Lisa Murphy relied him.

Q Okay. What period of time? Do you recall what period of time they worked?

A Joe Acosta was assigned at the onset of the task force, which would have been approximately March of 1992. I don't remember when he left. And there was a period where there was no FBI agent. And then Lisa Murphy was assigned. And I do not recall when she got there.

Q Okay. What additional factual

information did you develop after the -- after Mark B. Rasmusson trial that convinced you that Mark Rasmusson was involved in money laundering of narcotic traffic -- trafficking

activities?

A Without the case files, ma'am, I'd be speculating.

Q Okay. Was U. S. Custom Service part of the OLCEDEF case that investigated Flores?

A Yes. There were custom agents assigned to that task force.

Q Okay. And do you know who the case agent was?

A No. I was not in El Paso at that time.

Q All right. When did the OLCEDEF committee first meet to consider Rasmark investigation as an OLCEDEF case?

A Which Rasmark investigation?

Q The one that you conducted.

A Ma'am, I didn't testify that it was an OLCEDEF case.

24 Q Okay. So was the financial task
25 force case ever certified as an OLCEDEF case?

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1 up the question on me there.
2 Now, do you want to know what
3 information I have that says that they know
4 him and are associated with him or do you want
5 to know what information I have that states
6 that he's committed a crime with them?
7 Q Okay. Answer the first question.
8 What information do you have that he knows
9 these individuals, know Hector Saenz,
10 S-a-e-n-z, and Ricardo Valdez?
11 A I have no information independent
12 of this regarding Ricardo Valdez. So far as
13 Hector Saenz, we have circumstantial
14 information that associates Mark Rasmusson

with him.

Q And what is that circumstantial evidence?

A Mr. Saenz is associated with a gentleman by the name of Guellermo Portillo Corral. Mark Rasmusson also has a business association with Mr. Guellermo Portillo Corral.

Q And when was this business association?

A I don't recall. I would need my

case file.

Q And because Mark Rasmusson had a business association with Mr. Portillo, that means that he also has a business association with someone that knows Mr. Portillo. Is that

what you're saying?

A No. I find him to be associated with the name the same as the informant came up with.

Q Okay. Is there any other information you have that -- what information did you underover that Mr. Rasmusson participated in any criminal activity? Do you have any specific instances where Mr. Rasmusson was transferring money or drugs for any proceeds of drug smuggling activities?

MR. ROBINSON: I'll object. It's a misleading question and overly broad. Are you talking about the DEA case that led to Mr. Rasmusson's indictment or are you talking about the task force that Mr. Frost was working on? You need to be more specific in your

25 questions.

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1 Q (By Ms. Sheppard) Okay. With
2 regard to the financial task force that you
3 were the case agent for, what independent
4 corroboration did your task force -- did you
5 or any members of your task force obtain --
6 that indicate that Mark B. Rasmusson was
7 participating in money laundering activities?
8 A So far as the money laundering
9 activities through his association with
10 Guellermo Portillo, we seized one of the
11 aircraft, which we -- which belonged to maybe
12 Mr. Portillo, maybe Mr. Rasmusson, depending
13 upon how you read the registration.
14 Under the money laundering
15 statutes, we found that Mr. Rasmusson has

unreported financial dealings in Mexico.

We have an allegation from his spouse that he has extensive bank accounts in other countries, which he has not reported to the U. S. Government as required.

Q You're speaking of who has the unreported bank accounts?

A Mr. Rasmusson.

Q Okay. What unreported bank accounts did you uncover?

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A We are aware of a Banomex that we did find documentary evidence of.

Q How many other bank accounts did you find in Mr. Rasmusson's name in foreign countries?

A The only information we have on

those other accounts are the allegations by his spouse.

Q Okay. You're saying that Deborah Rasmusson made an allegation that he had bank that accounts in other countries?

A Correct.

Q Okay. And did you take any steps to corroborate that information?

A What steps we could.

Q Okay. And were you able to uncover any other bank accounts?

A In the countries we attempted to do so, it's very difficult to get that information. We never did get any.

Q Okay. So you're saying you did not uncover any other information?

A No.

Q Okay. When did you first meet George Salas?

actions, I know that.

Q And what actions did they take?

A Delivering the trash to special agents and detectives assigned to the investigation.

Q And where was the trash delivered?

A To agents in the neighborhood where the trash pickup was made.

Q Okay. In your process of obtaining the trash, did you pay these sanitation workers for picking up the trash and giving it to your agents?

A No, ma'am.

Q Do you have a list of the names of the sanitation workers that picked up the trash?

A I don't.

Q Do you record this information in your records?

A Not normally.

Q Okay. And on each occasion that the trash was picked up, you're saying that you went through the process of getting approval from the sanitation department and you had sanitation workers on each occasion to

Rasmusson thought that her office had been broken in on that morning?

A I don't recall, ma'am.

Q Okay. And did George Salas tell you that Deborah Rasmusson had a box of -- box of records that she wanted to report, possibly some missing records?

A Not at that time.

Q Okay. When -- when did you Learn that information?

A Which are we talking about? That she had a box of records or that she wanted to report missing records?

Q That she wanted to report, first of all, missing records that might have been a possible break in at her office. Did George Salas tell you that?

A You're -- you're still asking me two questions at the same time. I can answer those one at a time.

Q Okay. Let's take one at a time.

Did George Salas tell you that Deborah Rasmusson thought that someone might have broken into her office?

A Sometime during the evening, that

statement was made. I don't recall if I was told on the phone or later at the Customs office.

Q Okay. Did you tell George Salas to tell Deborah Rasmusson to bring the box of records with her?

A No, ma'am.

Q Okay. Did George Salas tell you that Deborah Rasmusson had a box of records with her?

A Not until she arrived at the Vicon office carrying the box of records.

Q Okay.

A Let me correct myself.

I don't remember whether she or Officer Salas were correct -- carrying a box of records at that time. However, I believe

it was Officer Salas since we took a firearm from her that she had.

Q Okay. And what did George Salas say to you in relationship to those -- to the box of records?

A Something to the effect that they belonged to Mrs. Rasmusson and she alleged they contained evidence.

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Q Okay. How many other law enforcement officers met George Salas with Deborah Rasmusson and her son in -- in his car at Hawkins and Montana?

A The only officer -- the only agent that Officer Salas had direct contact with at that time was myself. There were other agents in the vicinity.

Q Okay. How many vehicles showed up at that location at Hawkins and Montana?

A I believe there was mine -- if memory serves, two others.

Q Okay. Now, during the interview of Deborah Rasmusson at your office, the Customs office, was she ever furnished any beer or other alcoholic beverage?

A Yes, she was.

Q Okay. Excuse me.

Now, you stated in your affidavit that this interview lasted several hours. Do you note the time that this interview began and the time that it ended?

A It would be in the report. I don't have it with me.

Q Okay. Do you know whether it was

morning, afternoon or night?

A No. It was evening.

Q It was evening.

All right. Who was present when Deborah Rasmusson first arrived at the Customs office?

A Myself, Officer Salas, her son, Ian, Mrs. Rasmusson, Special Agent Eric Mills. I'd have to go back to the reports. I don't remember who else was there at the time. I believe that Group Supervisor Wilczewski was present.

Q Okay. Now, after you talked to George Salas and he told you that he was bringing Deborah Rasmusson to the Customs office, did you, in turn, contact your supervisor and -- to make a report?

A At that time, Assistant Special Agent Don Reay was present at the same location I was. I advised him of the circumstances and he made notifications and assignments as he felt were necessary.

Q Okay. Now, what assignments did he make?

A I recall him sending at least two,

possibly three other agents to the office. And I recall that he was going to notify the supervisor, my direct supervisor.

Q Okay. Now, why did he make those particular assignments? What was the basis?

MR. ROBINSON: I object. Agent Frost has no idea the reasoning Don Reay may have -- the

reasons he had -- subjective reasons he had on making these specific assignments.

Q (By Ms. Sheppard) In your report to your supervisor, Mr. Reay, what did you tell him?

A I told him that Officer Salas had stated that Deborah Rasmusson feared for her life, feared that her husband and his associates were going to do -- were going to kill her. Excuse me.

I advised him of the conditions that I had agreed to meet Deborah Rasmusson, at which time he authorized for a meeting to occur and made the assignments I've mentioned.

Q Okay. Now, what conditions,

specific conditions, are we talking about?

A That she -- if she wished to deal with us, that she was to come in, give us a complete and honest debriefing and provide whatever information she had on criminal activity, at which point, we would take whatever steps were necessary to ensure her safety.

Q Okay. Now --

A And that was relayed through Officer Salas. I did not speak to her on the telephone.

Q Okay. Now, in your opinion, was Deborah Rasmusson high on drugs at the time you interviewed her?

MR. ROBINSON: I'll have to object to the extent that probably

takes some medical testimony,
medical testing.
Q (By Ms. Sheppard) Okay. Now, how many beers did Deborah Rasmusson drink on that particular occasion?
A I don't recall.
Q Isn't it true you purchased a six-pack --

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A Yes, we did.
Q -- of beer for her.
Okay. Isn't it true that she drank the entire six-pack?
A Ma'am, I don't recall if she drank the whole thing.
Q Okay. Is that the normal Customs procedure, is to have a potential witness to

drink a alcoholic beverage before they give a statement to a Customs service?

A Are you asking me if that's normal procedure?

Q Yes.

A No.

Q Did you make a detailed written report of the interview with Deborah Rasmusson?

A Yes, we did.

Q All right. And was Deborah Rasmusson told she was free to leave at any time during this interview?

A We never saw any need to tell her that. She came to our office voluntarily. She was never placed in a cell or in restraints or detained in any way.

Q Okay. During the several hours that you were interviewing Deborah Rasmusson, did you present -- present to her any type of asset forfeiture document?

A No, ma'am.

Q Did you present to her any type of consent form that had an asset forfeiture clause in it?

A No, ma'am.

Q Did you present any type of document to Deborah Rasmusson at all?

A Yes, we did.

Q What type of document did you present to her?

A A consent to search.

Q Okay. Who authorized you to present that form to Deborah Rasmusson?

A No one.
Q All right. Now, at the time that you interviewed Deborah Rasmusson, was the financial task force on -- did the financial task force have any factual basis in their possession to -- to seize Rasmark property?
MR. ROBINSON: Would you reask that question? I didn't

understand it.
Q (By Ms. Sheppard) Okay. Let me rephrase that question.
At the time that you interviewed Deborah Rasmusson, what factual did you have to believe that Mark B. Rasmusson was connected with money laundering activities?
A I'm going to have to ask for

clarification. What do you mean by seize? Seize as in the -- as in a search or seize as in to forfeit and remove the property on behalf of the Government?

Q Well, you stated earlier that your supervisor, Donald Reay, had dispatched agents to Rasmark location?

A Correct.

Q What was the purpose of dispatching agents to Rasmark location?

A Ma'am, I didn't say that he dispatched anyone to Rasmark's location. He assigned agents to accompany me.

Q Okay. Now, did any agents go to Rasmark location?

A Yes. Much later in the evening.

Q Okay. Now, why did they go to the

Rasmark location?

A Because Mrs. Rasmusson had indicated that she was going to sign the consent to search form. She had indicated that there was an employee on premise. And the group supervisor assigned two agents to go to that location to secure that place in case that we were able to make a search to prevent anything from being removed before we got there.

Q Okay. Now, since Deborah Rasmusson did not sign that consent form --

A Yes.

Q -- what factual information did you have to obtain a search warrant to search the Rasmark offices?

A I didn't search the Rasmark offices

until November of 1993 under authority of the search warrants.

Q Yes, I understand that. But at this time in May -- on May 23rd, 1992, what factual basis, what information had you developed to warrant or to give you -- for you to -- well, let me ask it this way. Let me rephrase it.

Did you have sufficient factual basis on May 23rd, 1992 to obtain a search warrant to -- for the Rasmark offices?

A I don't believe so.

Q Okay. Exactly what criminal activities did Deborah Rasmusson tell you that Mark Rasmusson participated in?

A Mrs. Rasmusson alleged that Mark Rasmusson was transporting large amounts of currency out of the United States. Mrs. Rasmusson alleged that Mark Rasmusson and others in town had been engaged in homicides of persons they believed to be informants. Mrs. Rasmusson made numerous allegations against members of the local legal community, etcetera. I would need my reports to get completely into detail, but she made extensive allegations against not only her husband but several other members of the community.

Q Okay. Now, how much of this information did you or any member of the task force corroborate?

A We have never corroborated that Mark Rasmusson has murdered anyone. We never corroborated that he was moving a thousand

pounds of money a week or twice a week, whichever it was that she alleged.

She alleged tax evasion, which there is certainly extensive evidence of. She alleged foreign bank accounts, which there is evidence of.

Q Okay. And you say that you corroborated that Mark Rasmusson was moving large amounts of currency twice a week?

A No, ma'am. I said we never corroborated that.

Q Oh, you never corroborated that?

A That's correct.

Q Okay. And you corroborated that Mark Rasmusson was engaging in tax evasion?

A Certainly seems to be so.

Q Okay. Were there any type of

criminal charges brought against Mark Rasmusson for tax evasion?

A Not that I know of.

Q Okay. What violations of the Bank Secrecy Act did you find?

A Well, for one thing, Mr. Rasmusson maintains a bank account in Mexico, which is not only reported to the United States

Government as required.

Q Okay. Were any charges brought against Mark Rasmusson for violating the Bank Secrecy Act?

A That charge was declined by the United States Attorney's office.

Q Okay. When was that charge submitted to the U. S. Attorney's office?

A I don't recall.

Q Okay. Did you submit that charge to the U. S. Attorney's office?

A It would have been in reports that I forwarded to them. I don't remember if I wrote the specific report or who might have written it.

Q Okay. The box of records that you seized, what was the basis of you taking the records from Deborah Rasmusson on May 23rd, 1992?

A Mrs. Rasmusson stated to two special agents that there was everything that we would ever need to Mark Rasmusson in prison forever contained within that box.

Q She said -- she made that statement to -- to -- to whom?

A I'll have to refer to the affidavit again, ma'am.

Q Well, let me ask you this question. We can come back to that later. Let me ask you this question: After you got the records, the box of records and you got a search warrant and you opened the box of records, did you have a document analysis performed on -- on the records that you seized, that you obtained?

A At some time later. It wasn't done immediately.

Q Okay. Who did the document analysis?

A It would have been done by intelligence analysts from the task force, but I don't recall specifically who I had do that.

Q Okay. And what evidence did they find of money laundering in those documents?

A None that I can recall.

Q Okay. What evidence of drug smuggling did they find in those -- in those records?

A None that I recall.

Q What evidence of tax evasion did

they find in those records?

A That, I would have to go back to the reports on.

Q Okay.

A But there was numerous tax forms and things like that in the box that I'm not familiar with -- with how those things are set up.

Q Well, did you recommend to the IRS that they bring some type of criminal investigation or criminal charges against Mark Rasmusson as a result of those records?

A I made no recommendation to the IRS. I notified the agent in charge of the El Paso office of the circumstances.

Q Okay. And who did you notify in that office?

A Mr. Ed Wintercheck.

Q Okay. And did he review those records?

A I don't believe he did.

Q All right. During your entire investigation, did you ever receive -- ever develop sufficient evidence to seize any of the Rasmark property?

A We seized one aircraft, which it remains under debate who it belongs to.

Q What aircraft is this?

A November 7, Gulf Pappa, N7GP, it's a Lear jet.

Q Okay. And when was this seized?

A I don't recall even which year we got -- we got that aircraft in. We seized it in Houston.

Q Okay. And where was that aircraft -- seized it in Houston?

A Yes.

Q Who was operating that aircraft at that time?

A No one. We seized it out of a hangar.

Q Now, whose hangar was it located in?

A It was in a maintenance depot.

Q Okay. And what records did you find on that aircraft?

A Very minimal on the aircraft. There was log books regarding the repairs that were going on at that time. And that was it.

Q Okay. Did you ever determine who

Q And what did she tell you?

A She stated that the aircraft -- this is from recollection. I don't have my notes with me.

The aircraft came into possession of Rasmark from a Mr. Guellermo Portillo. And somehow or another, they were leasing it from him, but they ended up with a lien against it because he didn't pay them for letting him use

the airplane.

I asked her if they had ever owned the aircraft. She stated, no. However, FAA records state that it was registered to them.

Q Okay.

A Mr. Portillo claims that he gave them the airplane.

Q In your affidavit dated November 19, 1993, you state that the DEA investigation of Mark Rasmusson and Rasmark conducted in 1990 through 1991 was predicated on facts which indicated that Mark Rasmusson and Deborah Rasmusson had provided transportation of controlled substances.

What evidence in the case file, did you see that indicated that Mark Rasmusson

and Deborah Rasmusson or Rasmark Jet Charter, Inc. had transported controlled substances?

A Let me clarify it for you. We're -- we're focusing here on -- on the one DEA investigation, which I believe when you do that, you're discussing the Jesus Flores case; is that correct?

Q That's correct.

A That is not the only series of allegations that were made during that time period regarding Mr. Rasmusson by both DEA and Customs.

Q Okay. What other allegations were made?

A That he was engaged in trafficking, that he was also associated with other narcotics organizations.

Q Okay. What organizations was -- was he associated with?

A Ma'am, I'm not prepared to say he was associated with them. Those are the allegations that are in the files.

Q Did you make any effort -- you or any of the members of the task force make any efforts to corroborate whether Mr. Rasmusson

was associated with any of these organizations?

A The extent of my efforts were discussions with John Peterson who had developed the original cause and information and who provided me with the background information and the reports on this case.

Q Okay. Exactly what connection did they say Mark Rasmusson had? Did they have

any specific -- let me back up.

What specific incidents did the report corroborate involving Mr. Rasmusson?

A Without the case file being here and without a review by Customs' counsel, I'm going to have to decline to answer that due to ongoing investigations.

Q Okay. You're saying that U. S. Customs Service had evidence that Mark Rasmusson was involved in criminal activities?

A Ma'am, the term I used was allegation.

Q Allegation. Okay. Did you ever uncover any evidence to corroborate the allegations?

MR. ROBINSON: Again, are

you talking about the DEA

investigation that led up to the indictment of Mr. Rasmusson?

Q (By Ms. Sheppard) Did you ever uncover any evidence to corroborate, first of all, that the -- well, the financial task force allegations. Did you ever uncover any evidence to corroborate the financial task force allegations that Mark Rasmusson was participating in criminal activities?

A Yes, ma'am.

Q Okay. What -- give me a specific incident in which U. S. Customs Service or the task force uncovered Mark Rasmusson participating in criminal activity?

A Mr. Rasmusson committed a felony under Federal law in doing an illegal wiretap of his estranged wife's residence.

Q Okay.

A Or having that tap done. I don't

know if he did it or had it done.

Q Okay. Now, were charges brought against Mr. Rasmusson for illegal wiretapping?

A No, ma'am. It was declined by the United States Attorney as a domestic matter.

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Q Okay. And did you or someone on the task force present this to the U. S. Attorney's office?

A Yes.

Q Which U. S. Attorney did you present this case to?

A It was presented by Special Agent Acosta. And I do not recall which attorney it was presented to.

Q Okay. And what -- well, let me ask you this question: Did the task force have

any wiretaps placed on Mr. Rasmusson's telephone or Deborah Rasmusson or Rasmark?

A I can't answer that question.

Q What investigative technique did the task force use to corroborate who Mark Rasmusson's criminal associates were?

MR. ROBINSON: I'll object to the extent you're asking him to reveal U. S. Customs Service investigative techniques. That's privileged and he's not authorized to testify regarding those.

Q (By Ms. Sheppard) Can you name -- besides the Flores organization that occurred

prior to financial task force, can you name what organization, criminal organization, that

you are alleging Mark Rasmusson was participating in money laundering with?

A Ma'am, you've named me in my individual capacity in this suit. I cannot discuss anything else that's in the Customs files that are not specifically referenced in these documents.

Q What's the Customs guideline regarding investigative disclosures? Can you just give me generally?

MR. ROBINSON: I'll object to the extent I don't know what you mean by "investigative disclosures".

Q (By Ms. Sheppard) Do you understand the term investigative disclosures, Mr. Frost?

MR. ROBINSON: It doesn't matter whether he understands it

or not. I'm his lawyer and I don't understand the question.

Q (By Ms. Sheppard) Okay. Let me ask this question: Does U. S. Customs Service

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have a policy on restricting dissemination of information, law enforcement information investigation, investigative information.

MR. ROBINSON: To whom?

Q (By Ms. Sheppard) To third parties.

A Repeat the question one more time.

Q Okay. The question is: Does the U. S. Customs Service have a policy on dissemination of information to third parties, other than law enforcement people or organizations?

MR. ROBINSON: I guess I don't understand to the extent -- the FEMA Information Act. Are you asking for handbook policies or manual policies or what?

Q (By Ms. Sheppard) Okay. Well, we'll move on.

Did you attend a meeting on August 18th, 1993 with Phil Asiala, that's A-s-i-a-l-a -- and Tim Parmoville of the Ford Motor Company?

A I met Mr. Asiala. I do not recall the date. And I do not recall if I met Mr.

Parmoville or not.

Q Okay. What was the purpose of this meeting?

A The general purpose of it was to obtain the assistance of Ford Motor Company in providing us with the information in their files regarding the Rasmussons and Rasmark Jet Charter.

Q Okay. Did you tell Mr. Parmoville and Mr. Asiala that intent of the meeting was for you explain the position of the U. S. Customs as it related to Andrew Gantkessy and Rasmark?

A I can't say if that's factual or not. I don't recall.

Q Okay. Did you tell Mr. Parmoville and Mr. Asiala that the Rasmusson and Rasmark were deeply involved in a kickback scheme with Andrew Gantkessy?

A I don't recall if I told them that. I had evidence of that.

Q Okay. On the occasion that you

23 interviewed Mr. Gantkessy, did you reveal the
24 details of that interview to Mr. Parmoville or
25 Mr. Phil Asiala?

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1 A I don't believe I did, no.
2 Q Okay.
3 A It's possible that it was
4 discussed, but I don't know how much detail
5 they were provided with.
6 Q All right. Did you consult with
7 the Customs Service legal counsel about
8 whether you could testify for Ford against
9 Andrew Gantkessy in regard to his activities?
10 A Yes, we did.
11 Q Okay. Who did you consult?
12 A David Lindsey. He's the general
13 counsel here in El Paso.

Q All right. Did you seek legal advice from Mr. Lindsey in regard to whether you should send the letter to Ford that you sent?

A Which letter are you referring to?

Q A letter of July 26th, 1993.

MR. ROBINSON: May you show Mr. Frost a copy of that letter?

THE WITNESS: Yes. This -- I'd have to compare it to the original, but a similar letter was -- was given to Mr. Lindsey.

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Q (By Ms. Sheppard) Okay. And did he approve your sending that letter to Ford Motor Company?

A Apparently, he did. He forwarded

it back to us as I recall. As long as the special agent in charge authorized it, that he didn't see any problem with it.

Q Okay. And who was the special agent that approved the letter?

A Special Agent in charge, Michael Lappe.

Q Okay. Did anyone else assist you in preparing that letter?

A It was reviewed by my supervisor.

Q And who was your supervisor?

A Michael Wilczewski.

Q Okay. The letter provides a synopsis of what you characterized as -- that indicates a conspiracy to commit fraud by Mr. Rasmark and Mr. Gantkessy? Do you normally provide that type of synopsis of your investigation and evidence to third-party witnesses?

A You're going to have to be specific to third-party witness. I can't -- I can't

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answer that question that way.

Q Okay. Is Ford Motor Company a law enforcement agency?

A No, they're not.

Q Okay. Are they working in a capacity as a law enforcement agency?

A Their internal security units are populated generally with retired police officers who provide extensive investigative assistance to agencies such as Customs.

Q So are you saying that they working on behalf of --

A No, ma'am.

Q -- of Federal law enforcement

agencies or local law enforcements agencies?

A No, ma'am. They were on a request for assistance.

Q Okay. Now, were they -- are -- make sure I understand.

They were not working in any capacity for the Government; is that correct?

A They were not agents of myself. I don't know of any Government agency that holds them as agents.

Q Okay. So back to my original

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question, then. Do you normally provide synopsis of your investigation to parties other than law enforcement agencies?

A Not generally to other parties, no.

Q Okay. Why did Ford need to know the scope and nature of your investigation in this particular instance?

A Due to the fact that Ford Motor Company had already performed an extensive investigation of these allegations, had a file on it which we wished to review.

Additionally, they had had other information requested from them. And they were needing guidance as to what it is that we needed within their accounting systems.

Q Okay. Now, in your letter, you stated that you have irrefutable evidence of a crime. What irrefutable evidence do you have?

A Well, the one that came to mind quickest was fraud, mail fraud, etcetera, where it involved Next Flight, Incorporated,

Additionally under the laws of the

State of Texas as explained to me by Detective

Holland, there's a thing called commercial bribery, which appears to apply.

Q Okay. And were any charges brought against Mark Rasmusson for mail fraud in relationship to Next Flight?

A Not as of this date.

Q Okay. Are there any pending charges?

A I'm not at liberty to discuss ongoing investigations.

Q Are you saying there's an ongoing investigation?

MR. ROBINSON: I object.

THE WITNESS: No, ma'am. That's not what I said.

MR. ROBINSON: I object. He's asked and answered the question.

Q (By Ms. Sheppard) Okay. Did you review all the documents that the FBI subpoenaed from Ford Motor Company?

A No.

Q Did anyone on the task foce review the documents that were subpoenaed from FB -- subpoenaed by the FBI from Ford Motor Company?

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A Yes.

MR. ROBINSON: I'li object -- to the extent you know.

THE WITNESS: Yes, that I know of, they were reviewed.

Q (By Ms. Sheppard) Okay. Were

document -- did you instruct anyone on the task force to send those records to any law enforcement agency or even the Customs Service to have a document analysis performed on the documents received from Ford Motor Company?

A Are you talking about the documents subpoenaed by the FBI?

Q Yes.

A It's not within my authority to tell the FBI to do anything, ma'am.

Q Okay. Now, did you request copies of the documents that were subpoenaed from Ford Motor Company?

A No, ma'am.

Q Why not?

A Because they were seized under an administrative subpoena. And I preferred not to go that route.

Q Wasn't the FBI a member of the task

force.

A Yes, they were.

Q Wasn't your goal to find out whether Rasmark was participating in money laundering activities?

A As a very minor part of the point of the task -- of the task force?

Q Wouldn't it be relevant to review those documents to see if they contain any evidence of criminal activity?

A Yes, ma'am.

Q Okay. And you didn't think it was important for you to review those documents?

A That's not what I said. I stated they were seized under an administrative subpoena. And I don't -- I don't care to use administrative subpoenaes in financial cases.

Q All right. You contacted Mark B. Rasmusson's ex-wife in June of 1992, Lorie Nelson. What was the purpose of contacting Lorie Nelson?

A To gain information.

Q And what information did Ms. Nelson provide to you?

A I don't recall specifically. The

most -- the thing that stands out in my mind that she stated is that the inheritance, which is repeatedly referred to, was gone long before Mr. Rasmusson arrived in El Paso.

Q Okay. And what information did you provide to Ms. Nelson?

A That I was conducting an investigation.

Q Okay. Did you tell Ms. Nelson that Deborah Rasmusson was high on drugs in your office?

A I don't recall if that's the way it was stated that I had seen her under the influence of controlled substances.

Q Okay. And did you tell -- okay. Ms. Nelson had her attorney, William Cole, to contact you. Did he call you or did you call Mr. Cole?

A I don't recall who called who.

Q But you do recall having a conversation with Mr. Cole?

A Yes, I do.

Q All right. What information did you give Mr. Cole?

A I don't recall the specifics

without looking at the notes.

Q All right. Did you tell Mr. Cole that charges have been dismissed during Mark Rasmusson's criminal trial because the witness failed to appear?

A No, ma'am, I did not.

Q All right. Did you tell Mr. Cole that Mrs. Rasmusson was carrying a weapon because she felt her husband, Mark Rasmusson, and his friends were trying to kill her?

A I may have.

Q Did you volunteer to go to Douglas County to testify regarding this information if you were served a subpoena?

A I was asked if I would testify regarding what I knew about the child welfare situation in that residence if I were

subpoenaed.

Q Okay. So were you ever subpoenaed?

A It seems to me there was a subpoena or a request for an appearance of some type which the Customs Service declined due to the -- due to what was going on here at that time.

Q Okay. And what was going on here

at that time?

A The investigation and the state we were at with this investigation. We'd have had to reveal too much of our investigation.

Q Okay. Now, you stated that Ford -- that -- in your affidavit you stated that Mark B. Rasmusson and Andrew Gantkessy were engaged in double billing. And what

evidence did you undercover to corroborate that they were engaging in double billing?

A I would have to go back to the report, but as I recall, there is allegations by several former employees who had access to that kind of information.

Q Okay. And how did you corroborate that information?

A It's allegations by multiple employees as well as investigation relationship of Mr. Gantkessy would lead one to give that quite a bit of credence.

Q Okay. Did you obtain this information from Gail Beach?

A I don't recall if -- if she alleged double billing.

Q Okay. Gail Beach alleged that Andy

Gantkessy was participating in a kickback scheme?

A I believe the statement she used was he was receiving payments from Rasmark.

Q Okay. Did she --

A I don't believe she used the term kickback -- I don't -- that I recall.

Q Okay. Did she also tell you that Joe Sudomir was participating in a kickback scheme or receiving payments?

A As I recall, she did make that statement.

Q Okay. And did you indicate that information in your report?

A In the interview report?

Q Yes.

A Yes.

Q Okay.

A If she made the statement, it's in the report.

Q Okay. Now, in your letter to Ford Motor Company on July 26th that you have in front of you, why didn't you state that information in regard to Joe Sudomir in your letter?

aircraft that's referred to and the manner that it was purchased, etcetera.

Q Okay. And back to my original question. After you seized all the documents from Rasmark in November -- November 22nd, 1993, did you have a document analysis performed on all of those records to determine which records constituted evidence of drug

smuggling or money laundering?

A To the best of our ability, we conducted an analysis of those documents.

Now, what was the rest of that question?

Q Okay. Did -- what -- did the document analysis show evidence of drug smuggling?

A Per se, no.

Q Did the document analysis show evidence of money laundering?

A Not specifically.

Q Did the document analysis show evidence of mail fraud?

A I can't answer that question. I don't have a direct answer to that question.

Q Okay. Did the document analysis

show evidence of tax evasion?

A The document -- that specific document analysis, I don't recall what they came up with so far as financial flow on that particular issue.

Q You didn't have a report made to you in regard --

A Yes, ma'am. I said I --

Q -- to the document analysis?

A Yes, ma'am. I said I don't recall exactly what they said on that issue.

Q Were any charges brought against Mark Rasmusson as a result of the document analysis?

A As a result of the document analysis? No, ma'am.

Q On November 10, 1992, you appeared

at the Port of Entry when Deborah Rasmusson was stopped in her Mercedes. Was your appearance as a result of your request that they notify you at any time that Rasmark vehicles crossed the border?

A No, ma'am.

Q How did it happen that the Customs Service notified you and you appeared?

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A Which interview are you referring to first?

Q The interview at Ford Motor Company --

A No, ma'am.

Q At his office?

A No, ma'am.

Q Okay. And how many agents were in

that interview?

A My recollection is it was three Customs agents, a city police detective and an FBI agent.

Q Can you explain why it took so many agents to conduct an interview?

A It's what I would refer to as a very odd set of circumstances.

Q Okay.

A What occurred is we were going to talk to Mr. Gantkessy. There had been some surveillance to see how frequently he made stops at the Rasmusson residence.

Special Agent Acosta and I went there to do the interview. And when we started to go into the building, we just -- all of a sudden, everybody else was there,

too. And that's the way that that occurred.

Q Okay. And at any time, did Mr. Gantkessy ask to call his attorney?

A No, ma'am.

Q All right. And did anytime during the interview, did Mr. Gantkessy appear to be ill?

A What do you mean by ill?

Q Well, did he tell you he needed to leave and that he was feeling sick and he needed to leave?

A No, ma'am.

Q All right. What -- did each member of the law enforcement agencies in that meeting, did they ask questions of Mr. Gantkessy?

A I don't believe so.

Q Okay. What was the purpose of having Mr. Gantkessy come to the Customs office the next day?

A Mr. Gantkessy volunteered to come to the Customs office and give a more complete statement to Special Agent Schroeder and Acosta.

Q Okay. So what -- what -- when did

Rasmark by the financial task force, the OLCEDEF investigation, did you develop any factual evidence that Mark Rasmusson was transporting drugs?

A No, ma'am.

Q Did you develop any factual information to confirm that Mark Rasmusson was money laundering?

A You need to be specific when you say "factual information". Are you talking about probable cause to bring an indictment or any information at all?

Q Well, let's take the first one. Did you develop any evidence sufficient for probable cause?

A No, ma'am. I don't believe so.

Q Okay. What evidence did you have to conduct the Rasmusson residence with any criminal activity?

A Allegations by informants, things out of the trash. That would be the biggest thing.

Q Okay. And all this information that you received out of the trash, the documents that you got out of the trash, that

the record at approximately 12:03 p.m.

(Short Recess.)

THE VIDEOGRAPHER: This is tape two in the continuation of deposition of Lawrence Frost. We're back on the record at approximately 12:05 p.m.

Q (By Ms. Sheppard) Okay. Mr. Frost in your affidavit, November 1993, you stated that -- in paragraph 44 as numbered by the plaintiffs -- you stated that -- let me let you find that.

A Go ahead. I'm almost there.

Q You stated the contents of the box

upon analysis indicated the Rasmussons are engaged in tax evasion. Now, what was the tax violation or method of tax evasion?

A I'm going to have to explain to you, the way that that paragraph reads is poor sen-text on my part, poor writing on my part.

The analysis of the box did not stand alone. However, through the course of

investigation, the type of tax evasion we found is just underreporting of income. In other words, cash proceeds stuck in a pocket and not reported.

Q Okay. Was Mark Rasmusson or Deborah Rasmusson or Rasmark ever charged with tax evasion as a result of the records contained in that box?

A As a result of the records contained in the box nor for any other reason, not that I'm aware of.

Q Okay. And did you refer these records to the IRS for their evaluation?

A Yes. The IRS was present.

Q Okay. Who was present for the IRS?

A When the box was inventoried, Fonda Hivick. And during the course of the investigation there was -- I apologize. I can't remember the young lady's name. She left the agency. And then there was Alice Evecka also participated in the investigation.

Q Did Fonda Hivick participate in the analysis of the records?

A I don't recall who did the

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF TEXAS

EL PASO DIVISION

MARK B. RASMUSSON,	*	
ET AL	*	
	*	
VS.	*	CIVIL ACTION:
	*	EP-95-CA-475-F
LAWRENCE E. FROST,	*	
ET AL	*	

VIDEOTAPED DEPOSITION

THOMAS LENOX

January 10, 1997

investigative policies and procedures -- investigative procedures.

MS. SHEPPARD: Okay. Are you instructing the witness not to answer the question?

MR. ROBINSON: I'm saying to the extent you're asking for those things that he can't testify to, I'm instructing him not to answer it. If there's portions of that that he can answer, he may answer.

Q (By Ms. Sheppard) Okay. Can you testify to whether you did a database search called an EPIC search where you search all the other law enforcement databases pertaining to

Mark B. Rasmusson?

A Are you asking if I can comment if I did that?

Q Yes, did you do that?

A I'm not going to comment on that.

Q Okay. Are you --

MR. ROBINSON: For clarification of the record, what

do you -- the acronym EPIC. Is that the question?

Q (By Ms. Sheppard) Well, let me ask this question: Did you check the database of the NADS (phonetic)?

A I'm not sure I can answer that.

Q Okay. Do you check the database of TECS?

A I'm not sure I can answer that one either.

Q Did you check the database for El Paso Intelligent Center?

A I'm not sure I can answer that.

Q Did you check the database for NCIC?

A I'm not sure I could answer that.

Q Did you do any type of background check on Mark B. Rasmusson for initiating your investigation?

MR. ROBINSON: Which investigation?

Q (By Ms. Sheppard) The DEA investigation.

A The OLCEDEF investigation?

Q Yes.

A No, I did not.

Q Okay. Who made the decision to include Mark B. Rasmusson as one of the defendants in the indictment, in the super -- superceding indictment?

A The indictment was drawn up by the United States Attorneys Office. It was their decision who would and would not be indicted.

Q Okay. Did you submit information to U.S. Attorney's Office indicating that you wanted Mark B. Rasmusson to be included in the -- in the indictment?

A I don't -- I don't recall based on the time frame what discussions took place on who was indicted.

Q Okay. Do you recall what information you gave to the U.S. Attorney's

Office regarding -- pertaining to Mark B. Rasmusson?

A They had all the information that we obtained during the course of our investigation into Jesse Flores.

Q Okay. Did you give the U. S. Attorney's Office any evidence that showed that Mark B. Rasmusson was transporting drugs

on his aircraft?

A No, we did not.

Q Did you give any information to the U. S. Attorney's office indicating that Mark B. Rasmusson was transporting large amounts of currency on his aircraft?

MR. ROBINSON: I'll object to the form of the question as far as large amount of currency. If

you want to define what you mean by "large amount".

Q (By Ms. Sheppard) Did you give the U. S. Attorney's office any facts or information that Mark B. Rasmusson was transporting currency illegally on his aircraft?

A I don't recall.

Q Okay. Did you uncover -- during your investigation of Mark Rasmusson, did you uncover any facts that Mark Rasmusson had received over $500,000 in money laundering proceeds -- drug proceeds from the Flores organization?

A What was the dollar amount?

Q 500,000 -- $500,000.

A I don't believe so.

Q Okay. Did you uncover any facts and submit -- well, did you uncover any facts that indicated that Mark Rasmusson was utilizing the purchase of aircraft parts as part of Flores money laundering operation?

A Would you repeat that?

Q Did you uncover any information or evidence to indicate that Mark B. Rasmusson was using Rasmark Jet Charter, Inc. for purpose of purchasing air -- aircraft parts as part of Flores money laundering operation?

A I don't recall that, no.

Q Okay. During your OLCEDEF investigation, did the FBI ever tell you that they had an informant that was closely tied to Flores organization?

A The FBI didn't tell us anything. We don't get along very well, the DEA and the FBI, so, no.

(Mr. Steve Hatch joins the proceedings at this time.)

Q (By Ms. Sheppard) During your

A I don't remember.

Q Okay. When did the DEA OLCEDEF case close against Mark B. Rasmusson?

A Well, the OLCEDEF case is still an open case. When he was acquitted at trial, then he was no longer involved in the investigation or part of the investigation.

Q Okay. Are you saying that the OLCEDEF case continued against Mr. Rasmusson beyond his acquittal of June 14, 1991?

MR. ROBINSON: I'll object

to the form of the question.

You're asking for --

Q (By Ms. Sheppard) Did --

MS. SHEPPARD: I'm sorry.

Go ahead. Are you finish.

MR. ROBINSON: To the extent it may or may not be a pending investigation, he can't -- neither confirm or deny that.

Q (By Ms. Sheppard) Okay. Are you saying that the OLCEDEF case continued beyond the time that Mark B. Rasmusson was acquitted on June 14th, 1991?

A I don't think I can comment on the

status of any investigation, if -- whether it's ongoing or whether it's been closed.

Q Oh, you cannot say whether you closed the case against Mark B. Rasmusson?

A No. No, I won't say that.

Q Okay. So, arguably, one could assume it's still an open case? It could be?

A You can assume whatever you'd like ma'am.

Q Okay.

A I can't -- I can't comment on the status of investigations.

Q All right. Do you still have an open OLCEDEF case on Jesus Flores?

A I can't comment on that.

Q All right. Now, what facts did the DEA develop between June 17th, 1991 and March 1992 pertaining to Mark B. Rasmusson that indicates he was engaging in money laundering activities?

A Could you give the dates again.

Q Between June 1991 -- June 14th, 1991 and March of 1992.

A During that time, I was not assigned to the El Paso area. So I can't

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comment on that.

Q Okay. Were you ever contacted during that time by any DEA agent or U. S. Custom Agent or any member of the financial task force?

A I was contacted by a lot of agents in Custom -- regarding what? That's just an --

Q Regarding the -- regarding Mark B. Rasmusson, the investigation against Mark B. Rasmusson and the other plaintiffs.

A I don't believe so, no.

Q Okay. In your declaration that you submitted in this case, you stated that Mark Rasmusson was -- was never a major player in the Flores investigation. Did you reveal this information to U. S. Custom Service?

A I don't think they ever asked me. I'm not sure. I can't really answer that, the way that's asked.

Q Okay. Do you have any -- or did any of the members of the financial task force or U. S. Customs Service contact you regarding the present financial task force investigation against Mark B. Rasmusson and the other

plaintiffs?

A Not that I recall.

Q Okay. Were you aware of the

forming of the financial task force in March of 1992 for the purpose of investigating Mark B. Rasmusson?

A No, I was not.

Q All right. How long did the investigation, the original OLCEDEF, V.A. OLCEDEF case investigation against Mark B. Rasmusson -- what period of time did that investigation take place?

A Well, since I couldn't comment on if there is any ongoing investigations or what the status of them are, I'm not sure I could clearly answer that question.

Q Okay. So are you saying that you can't comment on the extent of your investigation against Mark B. Rasmusson during the DEA OLCEDEF case?

MR. ROBINSON: I think what he's saying is that he can't, you

know, confirm or deny whether the investigation is still ongoing.

If you want to ask specific

questions about the DEA investigation that led up to your client's indictment and subsequent trial, those are appropriate questions.

Q (By Ms. Sheppard) Let me ask you this question: Did you have any information in your DEA case file that connect Mark B. Rasmusson to the Jesus Flores organization back in 1989 when -- when you officially made -- or at least when you first got involved with DPS in investigating Jesus Flores?

A Without going back and reviewing

the entire case file, I can't -- I don't know. I can't comment on that if there -- if there is or there isn't.

Q Okay. Did you develop -- did the DEA or any members of the DEA OLCEDEF task force develop any evidence that Mark B. Rasmusson was engaging in transporting drugs or any illegal contraband for the Jesus Flores organization?

A No, we did not.

Q Okay. What other agencies participated in the DEA OLCEDEF task force?

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planes that were seized were Rasmark aircrafts?

A No, they were not.

Q Okay. Did DEA find any -- uncover

any evidence connecting or showing that any of the Rasmark aircrafts transported cocaine for -- for Flores organization?

A Not that I'm familiar with.

Q Were you ever contacted by U. S. Customs and Special Agent Larry Frost?

A I don't recall ever being contacted by him, no.

Q Okay. Were you contacted by U. S. Customs Agent Fred Schroeder?

A I worked with Fred over the four years I was assigned to El Paso. I spoke to him regularly.

Q Okay. Did you speak to him in regard to the Mark B. Rasmusson investigation that U. S. Customs Service were -- were leading?

A I recall a conversation. I don't remember when. The only thing I recall was he

had informed me that Deborah had brought in --

Deborah Rasmusson had brought in a box that

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF TEXAS

EL PASO DIVISION

MARK B. RASMUSSON,	*	
ET AL	*	
	*	
VS.	*	CIVIL ACTION:
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LAWRENCE E. FROST,	*	
ET AL	*	

VIDEOTAPED DEPOSITION OF

OFFICER GEORGE L. SALAS

January 10, 1997

Q Okay. And do you have to file that at the time that you obtain the job or before you obtain the job?

A I filed it when they requested it so that I would be free to work any -- any extra jobs during the year that it's valid for.

Q Okay. You're saying you file it at the time that the Rasmussons requested that you do the work or is that what you're saying?

A No.

Q Okay. What are you saying?

A I'm saying that when the department requested that we submit one of those forms from the Civil -- to the Civil Service requesting permission to work outside employment, that is the time when I submitted

it.

Q Okay. So at the time that the department asks all the officers to submit their form? Is -- is that what you're saying?

A Most officers won't submit one unless they feel they're going to work one. So it could be at any time from the time they begin asking for those sheets. I believe I

was going to work some football games that season, so I had submitted one early. And it should indicate on there about the time that I did so.

According to this, I submitted it October of '91. And after I had been hired by Rasmark, after a number of times having gone there, I felt it was going to be a more

semi-permanent position, I made a memo which I submitted to my supervisor to the department indicating that I expected to be working on a semi-permanent basis.

Q Okay. Now, we had a request for discovery of material. Was that document included in the response to the discovery request?

MR. BAKER: This -- this document here is what has previously been given to you. This is between George Salas and his sergeant. You want to mark this as Exhibit Number 1 to his deposition and the one March --

MS. SHEPPARD: Yes.

MR. BAKER: -- March of '92

as Exhibit 2 to his deposition?

MS. SHEPPARD: Yes. Let's do that. Defendant's 1 and Defendant's 2. And you also had another form, another --

MR. BAKER: This is -- this is the initial report on the initial contact.

MS. SHEPPARD: Okay. Let's mark this as Exhibit 1 and this is 2 and this is 3.

MR. BAKER: That's the second page of the number one report.

MS. SHEPPARD: Okay.

MR. BAKER: That's the second page of Exhibit right

there.

(Whereupon, Deposition Exhibit Nos. D-1, D-2 and D-3 were marked for identification.)

Q (By Ms. Sheppard) Okay. Now, in regard to the outside employment, do you

submit your request annually or how often do you have to submit it?

A Annually.

Q Annually?

And once it's submitted, is it good for just one year or is it -- or is it good for forever?

A It's not good until it's approved

by the Civil Service Commission. And on the date of approval, it's good for one year from that date.

Q Okay. Now, when was your request approved by the Civil Service Commission?

A It's on the -- on the paper there.

Q Oh, okay.

How many times were you paid by Deborah and/or Mark Rasmusson?

A I don't know a specific number. Possibly six times, I would guess. Eight.

Q Okay. Now, did you report this income on your tax return, your Federal income tax return?

A Yes, I did.

Q Okay. And do you maintain any other records of the receipt of this money?

A No.

Q All right. Did you report it on your 1992 income tax return?

A Yes.

Q All right. And when did you first become aware of -- well, let me ask you this question first.

How many occasions did you go over to Deborah Rasmusson's home?

A Possibly six or eight times.

Q Okay. And those are six or eight times that you were paid?

A Yes.

Q Okay. Now, did you go to her home on other occasions that you were not paid?

A Yes. I went one time.

Q Okay. Only one time?

A Yes.
Q All right. Now, did you ever have sex with Deborah Rasmusson on any of these occasions that you went to her home?
MR. BAKER: Wait just a minute, now. I'm going to instruct him not to answer that question. That doesn't have

anything to do with the issue of qualified immunity.
Q (By Ms. Sheppard) On any of the occasions that you went to Deborah Rasmusson's home, did she ever give you her keys for -- for you to use her vehicle, her Mercedes?
A No.
Q Okay. And on any of the occasions

you went to Deborah Rasmusson's home, did you ever ride in her Mercedes with -- with her son, Ian Maye?

A No.

Q Okay. On any occasions during the period of time that you knew Deborah Rasmusson, did Deborah Rasmusson ride in your police vehicle?

A No.

Q Okay. On any occasions that -- during the period of time you knew Deborah Rasmusson, did you and Deborah Rasmusson ever go to O'Henry's?

A Yes.

Q Okay. Can you tell me about that occasion?

A That was a shift choir practice we

were having that day. It was at O'Henry's. And I was there with my friends, other officers. We had just gotten out of training. And I called her up and invited her to come down if she wanted to.

Q Okay. Now, why would you call up Deborah Rasmusson and ask her to attend that function with you?

A I considered her a friend at that time.

Q Okay. And what was the basis of the friendship?

A I knew her.

Q You knew her how?

A As a friend.

Q Okay. What kind of activities did you two do as friends?

A Nothing.

Q Well, how do you -- well, do you recall any of the occasions that you and Deborah Rasmusson as friends were in her vehicle?

A Yes.

Q Okay. And do you recall any of those occasions with -- where you and Deborah

Rasmusson as friends was in your police vehicle?

A No.

Q Okay. Do you recall any occasions where you took Deborah Rasmusson riding in your police vehicle?

A No.

Q All right. Do you recall any

occasions where Deborah's friend Blanca Alavar -- Alavar were with you and Deborah Rasmusson and, perhaps, one of your partners?

A Yes.

Q Okay. Can you tell me about that occasion?

A That was the night of -- we went to O'Henry's. After that, she wanted to go riding. And she invited me and my friend to come along with her and the other girl. And we went for a drive.

Q Okay. Now, what time did this occasion take place?

A I don't know what time. It was in the evening.

Q In the evening.

Okay. And were you on duty at that

time?

A No.

Q Were you in uniform at that time?

A No.

Q Were any of the other officers at this event in uniform?

A No.

Q Okay. Who was the friend with you, the police officer friend, with you on this occasion?

A We called him Bart. His last name is Alvarez.

Q Can you spell that, please?

A A-l-v-a-r-e-z. I don't remember his first name.

Q Okay. Now, who were your partners -- how many partners did you have during 1992?

A I couldn't say.

Q Okay. Well, around this time period when you were associating with Deborah Rasmusson, who was your partner?

A I don't remember if I had more than one or two.

Q Well, name the one or two that you might have had.

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A One of them was Richard Castellano.

Q Okay. Can you spell that Castellano?

A C-a-s-t-a -- no -- t-e-l-l-a-n-o.

Q Okay. And who's the other person?

A I don't remember. I just think there might have been somebody else that was a partner of mine.

Q So, are you saying that you only had one partner during this period of time?

A Yes. I may have had another, but I can't remember who it was or -- I don't remember specifically who I worked with during those days. I was a relief, and I would work with different people. And I would work with junior officers if their senior partners weren't there.

Q Okay. When did you first become aware of Larry Frost?

A I received a phone call at The Valley station -- well, I had a message left at The Valley station from Agent Frost. And the date -- I'd have to look up the date.

Q Okay.

A Okay. It was March 2nd, 1992.

Q Okay. Larry Frost -- did Larry Frost call you?

A He called and left a message and I returned the call.

Q Okay. And when you called him back, what did he say to you?

A Well, I -- I told him that I was -- who I was. And I told him -- he asked me why I wanted to know about the Rasmussons. And I told him who I was and how I got to work with them and that I had simply wanted to make sure that I wasn't getting into anything I wasn't aware of. I had a friend of mine, who is an FBI agent, just check into the names to see if there was anything there because I didn't want to end up in a bad situation.

Q Okay. Now, who is the this friend

with the FBI?

A Name is Agent Camarillo. Hector Camarillo.

Q Can you spell that name?

A C-a-m-a-r-i-l-l-o.

Q Okay. And he worked for the El Paso Police Department what -- during what period of time?

A Before -- I don't know. Worked probably five, six years prior to going to the FBI. I don't remember what dates he left and what dates he started with the FBI.

Q Okay. Why did you call him?

A He was a good friend of Rick Castellano's and he was a friend of mine, an acquaintance of mine. And during one time, we

-- we ran across him. And we were just talking. And I told him I started working with the Rasmussons. And the name didn't ring a bell with him. And asked him if he wouldn't mind just checking for me if he had a chance.

Q Well, was there any reason why you couldn't check the El Paso Police Department records --

A I did.

Q -- data base to see what information were in the records?

A I did.

Q You did?

What information did you find in the records?

A Basically, there was a report that I had made and another incident where Deborah

What did he tell you about the Rasmussons or Rasmark?

A He told me basically that there is an investigation going on and I'd be contacted by a Customs agent. But he didn't tell me anything else, other than that.

Q Okay. Now, after he told you that there was an ongoing investigation, why did you continue to work for Deborah Rasmusson and Mark Rasmusson?

A An investigation by itself doesn't indicate there was anything going on. I didn't know any details about it at that time. And I don't believe that during that period of time from the time I told them until the time I next heard from Larry that there was anything to suspect.

Q Okay. When you talked to Larry Frost, what information did he tell you about the Rasmussons?

A Basically, he told me that they were working an investigation on Rasmark and that -- I told him, well, I didn't want to step on any investigation or didn't want to get myself in any trouble.

would contact him if you saw something?

A No, because I hadn't seen anything to make me think that they were involved in anything criminal.

Q Okay. And during the period of time that you worked for Deborah Rasmusson and Mark Rasmusson, did you see anything that led you to believe they were involved in criminal

activity?

A No.

Q Okay. On the occasions that you went to Deborah Rasmusson's home, did you go inside the home?

A Yes.

Q Okay. Were you there for any period of time greater than five minutes or ten minutes?

A Yes.

Q 15 minutes?

A Yes.

Q What about an hour?

A Yes.

Q Two hours?

A Yes.

Q Were you there greater -- any times

just a minute. Sergeant Metcalf.

MS. SHEPPARD: Okay. I'd like to state for the record that Counsel is conferring with the client and testifying on behalf of the client.

MR. BAKER: I'm not testifying one word. I'm reminding him of the bomb incident.

Q (By Ms. Sheppard) Let's go to the bomb incident.

Do you recall the occasion of the bomb incident?

A Yes, I do.

Q Okay. How -- did Deborah Rasmusson call you on that occasion?

A Yes, she did.

Q Okay. What did she tell you?

A She told me she thought she had a bomb in the house.

Q Okay. And did you go to her on that occasion?

A Yes.

Q And did she show you the object

that she thought was a bomb?

A Yes.

Q Okay. And did you call the El Paso Police Department bomb squad?

A I called the police department. And they sent out somebody. I believe it was a unit and possibly a supervisor. And they requested the bomb squad out there.

Q Okay. And did they take the object with them?

A I believe they did.

Q All right. And did you file a report regarding the -- the bomb incident?

A No, I didn't.

Q Okay. Did anyone at El Paso Police Department file a report?

A Not that I'm aware of.

Q Okay. And what was the results of the bomb squad assessment of the bomb?

A I didn't hear about that for a while until they told me that it was a fake bomb, that it wasn't a bomb. I really don't recall anything specifically about it. But I know that there was no bomb there.

Q Okay. Now, did you -- can you just

give a description of what this fake bomb looked like?

A No ma'am. Just a -- some wiring and that's about it that I saw.

Q Okay.

THE COURT REPORTER: I need to change paper.

MS. SHEPPARD: Okay. We're back on the record.

Q (By Ms. Sheppard) I believe you last stated you did not -- you did not recall what the bomb -- the fake bomb looked like?

A That's right.

Q Okay. Was there a picture on it? Do you recall whether there was a picture attached to this fake bomb?

A No. I don't remember anything

about it -- a picture.

Q Okay. All right. Have you ever borrowed any of the Rasmusson vehicles?

A Pardon me?

Q Have you ever borrowed any of the Rasmusson vehicles?

A No.

Q Okay. Have you ever entered the

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And I told her, well, let me call them. And, so, I called Larry Frost and told him that she'd cooperate and she wanted their help. So he told me to go out and pick her up. I told him I didn't want to get involved and he said, "Well, you need to go."

So I agreed and he told me to meet him at the Circle K. And I don't remember if

I was to call him when I got to the Circle K or that they'd be there. I don't remember the details.

I left there, went to get my gun and then I went to meet Deborah. When I got to the business, she had the gun there. And I looked around, made sure nobody was around, no suspicious cars. And I went inside. I didn't know what was going on at this point. So I told her I was there to take her to these guys. And she told me she had some papers. And I think that she told me at that time that she felt somebody had broken into the business that day.

And I said, well, there is nothing that I could do about it at that point. My concern was her safety. So I told her, "Let's

go." And she had her son with her.

And she indicated to a box that she had there with a lot of stuff that would put Mark away.

And I said, "Well, that's your stuff", I told her. And so we started to leave. And I don't know who brought the box out. It had to be either her or her son, Ian. It wasn't me because I wouldn't want to be caught in a situation where someone might be trying to kill her and I've got a box in one hand and a gun in another. So somebody else carried it out and took it to my car.

And I think that -- I'm just guessing -- and I don't know if you want me to guess -- that Ian brought it with him and put it in the back seat with him. And Deborah

went in -- sat in the front seat of the car. And I took the pistol from her and held on to it.

Q Okay. Now, did you, before leaving Rasmark's office, look in that box of records to see what kind -- what was in that box?

A No.

Q Okay. Did you tell Deborah

Rasmusson to lower her head in the front seat so she couldn't be seen?

A Yes.

Q Did you tell her son, Ian, to lower his head in the back seat so he couldn't be seen?

A Yes.

Q All right. Do you -- before

leaving the Rasmark office, did you tell Deborah Rasmusson to grab her gun, that she might need it?

A I don't remember. I might have, but I just don't remember that.

Q Okay. Now, why is it that you called Larry Frost first instead of the El Paso Police Department?

A Because Larry -- Larry Frost was a Federal agent and I knew they had a witness protection program. And the police department doesn't have one of those. So I didn't think there was anything we could do to help her.

Q Okay. So do you later make any type of report to the El Paso Police Department?

A No, ma'am.

Q Okay. Now, what was your understanding of what Larry Frost could do for Deborah Rasmusson?

A Well, just my basic knowledge of the Federal government is that they can protect somebody if they feel they have a reason to.

Q So is it your testimony that if someone calls El Paso -- El Paso Police Department regarding someone threatening them, the El Paso Police Department cannot take any action to protect that person?

A Well, there's not very much we can do. You're asking a very broad question. I have to know all the facts and all the variables.

Q Okay. Well, did you call your

supervisor to find out if there was a situation where the El Paso Police Department could assist?

A No, ma'am.

Q Okay. How many agents met you and Deborah and her son at Circle K?

A I don't know. Possibly three or four. I just don't remember the number.

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Q Okay. Who was sitting in the interview room with you?

A First, Deborah and then I was there by myself and the agent was there when we were both there and that was it. After he left, after a while, they went ahead and asked me I could come out and sit outside.

Q Okay. Now, the interview room

you're speaking of, is that the same interview room where Deborah Rasmusson was sitting?

A No. They took her somewhere else.

Q Okay. Was Deborah Rasmusson's son, Ian, in the same room with you?

A I don't believe so. I think he was taken to another room. A conference room, I think.

Q Okay. Did you see Deborah Rasmusson drink any alcoholic beverages?

A I saw her with a bottle of beer, but I don't remember her drinking it. She may have been. I just don't remember it.

Q All right. Now, did you tell Larry Frost or any other Customs agents that Deborah Rasmusson had evidence in that box that she brought with her?

A No, I told her she had a box there to give. But I didn't -- I never pointed it out to them or anything. They -- that was -- when they got there -- I think the box had been taken in already, so I never had anything to do with it.

Q Okay. So you didn't tell any of the Customs agents that that box contained evidence?

A No. She had told them that.

Q Okay. Now, what time was it when this interview concluded with Deborah Rasmusson?

A I don't know. I'd be guessing. 7:30, 8:00 o'clock, I would guess.

Q Okay. Now, where do you go when

that interview ended?

A I went home.

Q All right. Now, as you were leaving out of the Customs office, did Deborah Rasmusson say -- pull the fire alarm?

A Yes.

Q Okay. And did you see a fire department truck come out?

A No.

Q Okay.

A I left during that time.

Q Okay. Now, what contact have you had with Deborah Rasmusson since May 23rd, 1992?

A We met once beside the K-Mart off of George Deater and she told me that Mark

told her that she didn't want her to see me any more. And I believe at that time I gave her back the keys to the house and I told her, fine. And I don't remember if we met one more time after that. The next time I ran into her was about -- lately, the last time here was at the lower level of the police headquarters building at ID&R. I ran into her there. I can't remember when that was now. But we just said hello. And I told her, "Here is my card. If you need something, let me know." And that was it.

Q Okay.

A She -- she did call me after that --

Q Okay.

A -- after I saw her there telling me that she had a drug problem. And I told her

that -- I told her she should go to Charter Hospital or something like that. But she wanted me to help her and I told her I couldn't. And she said, "Well, don't you work with drugs and stuff?"

I said, "Yes, I work with children in drug programs. But I don't have any access to anything else." So I told her I couldn't help her. And that's the last of it.

Q Okay. Now, why would she come to you about her personal problems?

A I don't know.

Q Okay. Now, you said that you and Deborah Rasmusson were friends. Did she often tell you about her personal problems?

A No.

Q Did she ever discuss any of her

personal feelings with you?

A We were acquaintances or friends. No.

Q Okay. And so you're saying that the first occasion that she ever mentioned anything about her husband to you was on that occasion of May 23rd, 1992?

A Did she ever mention anything about

her husband?

Q Yes.

A No. When we first -- she'd always talk about him. And she told me she felt she -- he was seeing somebody else and he had somebody living up in Colorado.

Q Okay. And on -- did she call you about any occasions or someone peeking in her

windows at home?

A I -- I don't remember that specifically. No. I got to say I don't remember.

Q Okay. Were you there when -- well, you saw Deborah Rasmusson with the beer. Did you see Agent Frost offer her that beer?

A No.

Q Okay. But you did see her with the beer in her hand?

A Yes.

Q Okay. Now, on this occasion, May 23rd, 1992, did you think that Deborah Rasmusson was high on drugs on that particular occasion?

A No, I couldn't tell. She was scared.

Q Okay.

A I wasn't looking for that.

Q Okay. Were you aware that Deborah Rasmusson used drugs at that time?

A I don't remember. I don't believe I did, no. I found out that day that she was using it.

Q What did you find out that day?

A From Agent Frost.

Q What did Agent Frost tell you?

A That she had a cocaine habit.

Q Okay. And what else did Agent Frost tell you?

A That they had been investigating a money laundering case.

Q Okay. Anything else?

A Nothing that comes to mind, no.

Q Okay. And -- okay. Now, when you called Agent Frost, did he tell you anything in regard to the Customs service going to get a consent to search form -- consent to search form signed by Deborah Rasmusson?

A No.

Q Okay. Did he tell you anything about the purpose of this meeting with Deborah

Rasmusson?

A No.

Q Okay. And were you -- did you overhear any of the conversation between Frost or any other Customs agents with Deborah Rasmusson?

A No. The only thing I heard towards the end of the evening is she was yelling at them stuff and just -- they were arguing. But

I don't remember the substance of that.

Q Okay. Did you and Deborah Rasmusson ever have a conversation about that meeting after May 23rd, 1992?

A No. I don't believe so. Wait. I think the time that we met, she told me that they had beat Ian. That's what she had told me.

Q Okay. And she said who had beat Ian?

A The Customs people.

Q On the occasion of May 23rd, 1992?

A Yes.

Q Okay. Did she tell you anything else in regard to that occasion?

A No. Just that she was mad at them

and because -- they had gotten into a fight with Ian, but I don't know what the fight was about.

Q Okay. Did she say anything to you about agents taking the box of records from her?

A She told me they kept the box.

Q Okay. Did she say anything to you about she thought you set her up?

A Yes, she did.

Q Okay. And what did she say to you about that?

A She said that she thought that I had set her up all along. And I told her that was ridiculous.

Q Okay. And how -- during your employment with Deborah Rasmusson or any other

time on any other occasions you went by her home, did you ever see any contraband or illegal drugs or large sums of money in the home?

A No, ma'am.

Q Okay. Now, how many times have you personally talked or meet with Agent Frost?

MR. BAKER: Wait a minute.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

MARK B. RASMUSSON, et al., Plaintiffs,	*	
VS.	*	CIVIL ACTION: EP-95-CA-475-F JURY DEMAND
LAWRENCE E. FROST, et al., Defendants	*	

DEPOSITION OF FONDA HIVICK

January 17, 1997

are asked the same questions you are today and you give different answers, you can be expected to be asked to explain the reason for your differences in your answers.

Do you understand this?

A Yes.

Q You understand that although we're sitting here in the conference room at the Hampton Inn, you are testifying under oath under penalty of perjury and that testimony that you will give today has the same force and effect as though it was given in court. You realize that perjury is a felony punishable by a prison sentence?

A Yes.

Q It is important that you understand my questions. If you do not understand any question, please tell me; and I will rephrase it. If you fail to tell me that you do not understand a question, everyone will

assume and the record will reflect that you understood the question. Is this clear?

A Yes.

Q You are required to give your best recollection and response to my questions. If, for example, you do not remember the exact words of a conversation, you are required to give your best recollection of the substance of it. However, I do not want you to guess or to speculate. Do you understand

this?

A Yes.

Q The reporter is unable to record two people speaking at the same time. So, please, let me finish a question before starting to answer. I shall extend the same courtesy to you. That is, I shall wait for you to complete your answer before asking another question.

Also, please answer questions so everyone can hear you. The reporter cannot record a nod of the head.

Do you understand this?

A Yes, I do.

Q Okay. Are you ill today; or are you taking any medications, drug or other substance that might affect your act to testify accurately here today?

A No.

Q At any point during this deposition if you feel ill or for any other reason are unable to testify accurately, please tell me immediately; and we shall take a recess.

Is there any reason at all why you cannot testify accurately here today?

A No.

Q Okay. Do you have any questions about what I have just told you or about this deposition?

A No, I don't.

Q All right. How long have you been a special agent for IRS?

A 13 years.

Q Okay. And previous to that how long have you been in law enforcement?

A That's the sum total of my law enforcement.

Q Now, have you attended any law enforcement school or any other school in document analysis pertaining to drug smuggling or money laundering?

A Not a school, per se, I mean some training courses and some training sessions, but not a specific school that I can recall.

Q Okay. You've had some type of training in document analysis?

A Yes.

Q All right.

MR. ROBINSON: I guess I'd like the question clarified. What type of document analysis are you referring to?

Q (By Ms. Sheppard) Pertaining to drug smuggling or money laundering activities.

A Yes.

Q Okay. Tax evasion?

A Yes.

Q Violation of Bank Secrecy Act?

A Yes.

Q Mail fraud?

A Mail fraud?

Q Yes.

A I've had some experience, but I'm not sure that I've ever had any training.

Q Okay. What about kickback schemes?

A I've never been to a training course, I don't think. I've -- I've had some training materials on it.

Q Okay. Now, are you a CPA --

A Yes, I am.

Q -- by -- okay, education. Okay. And how long have you been a CPA?

A Since, I think, February of 1986. I'm not certified in the State of Texas, however.

Q Okay. Now, in your declaration you state that you have no personal knowledge of the allegations made against Mark Rasmusson in the previous criminal case Cause No. EP-90-CR-258-H. Did you review the entire DA case file or any part of it?

A No, I didn't.

Q Okay. Why not?

A I wasn't assigned to the case, and there was no reason for me to be reviewing a case I'm not involved

Charter, Inc., aircrafts?

A I don't remember.

Q Okay. Let me ask you this question: What -- what are your duties as a special agent with the IRS?

A Let me get back to that last one. I think I did check with the FAA.

Q You did? Okay.

A I believe so.

Q What information did you learn from that check?

A Now, that I don't know.

Q Did you -- did you learn any information that indicated that Mark B. Rasmusson or that Rasmark Jet Charter Service were engaging -- or were engaging in any type of criminal activity pertaining to drug smuggling or money laundering activities?

A From FAA records?
Q Yes.
A No, I can't say that I did.
Q Okay. And what about tax evasion, mail fraud?
A No.
Q Kickback schemes?
A From FAA records?
Q Yes.

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A No.
Q Violation of any Banking Secrecy Act?
A No.
Q And let's back up to the previous check you did that you already indicated. Did you see any information that led you to believe that

Mark B. Rasmusson or any of the other plaintiffs violated any tax records, tax violations?

MR. ROBINSON: Which system are you referring to?

MS. SHEPPARD: The previous one.

Q (By Ms. Sheppard) You testified to TECS, your previous searches that you performed.

A Say that again.

Q Okay. The previous background checks that you already testified to --

A Right.

Q -- did you find any information that led you to believe that Mark B. Rasmusson, Debra L. Rasmusson or Andrew A. Gantkessy or Rasmark Jet Charter, Inc., engaged in any type of violations of the Internal Revenue Code, tax evasion, for example?

A No.

Q What about mail fraud?

A Well, no.

the circumstances of how Special Agent Frost obtained the box?

A Just that, you know -- I don't know. It was kind of a mixed-up deal. It had gone through Debbie Rasmusson, and that she had been at the Custom's office; and, you know, I don't remember all the details to it.

Q Okay. Now, in Special Agent Frost's affidavit he indicates that Mark B. Rasmusson and the Rasmusson's were living a lifestyle that -- where they were unsupported by any known sources of income. Now, understanding, you reviewed the contents of that box --

A I looked at -- I looked at what kinds of documents were in there and I looked at a few of them briefly; but didn't do any kind of indepth review of them.

Q And from all of your -- from what review you did, did you find anything in that box to indicate to you possible violations of the Internal Revenue Code, tax evasion, for example?

A Well, the records were incomplete. They didn't cover, you know, like a full year, a full two or three years so that you could go through; and there weren't, like, here's one set of books and here's the other set that you could compare them. So, they were

incomplete records. It wasn't possible really for me to draw a conclusion from the records that I saw.

Q Okay. Now, in your declaration you state that your duties, while assigned to the Criminal Investigation Division at the El Paso Postal Duty, included the identification and evaluation of prosecution potential of individuals suspecting of violation of the

Federal law over which the IRS has investigative authority. Did you evaluate the prosecution potential of Mark B. Rasmusson, Debra L. Rasmusson -- let's take one at a time.

Did you evaluate the prosecution potential of Mark B. Rasmusson?

MR. ROBINSON: Regarding what area of the law?

Q (By Ms. Sheppard) Under the investigative authority of IRS?

A Well, I -- I think I began that process. I worked on this; and when this first came up, I was assigned to several other cases at the same times. This was not by any means my primary concern, and I would work at it and try to get brought up to speed to see what was going on and to assess the IRS' involvement and potential in it as we went along, but it wasn't my primary thing.

And, you know -- so, I can say I started

that process. Later that -- the OSDETF that this arose out of was transferred to another agent.

Q Okay. Who was that agent?

A It was transferred to Rebecca Aguirre.

Q Okay. Now, from the evaluation that you did do, did you find any information that led you to believe that there might have been violations under the IRS investigative authority?

MR. ROBINSON: That there might be a violation, is that the question?

Q (By Ms. Sheppard) Yes, I mean, the potential. Did you find any potential there?

A I felt that the strongest potential would have lied with a Customs violation. If that violation had proven out, then there also would be a potential for some IRS violations because often they kind of go together. But the primary things that I was -- that I

had a little -- had learned information about would have led to a Customs violation.

Q Okay. Now, what specific Custom violation are you referring to?

A A Title 31 violation.

Q And that says what?

A Import and export of over $10,000 currency without declaring it.

Q Okay. And what do you -- what information did you see there that led you to believe there might be a potential violation?

A I didn't see any information.

We're still talking about information in the box?

Q Yes.

A No, I didn't see anything in the box that

would have done that.

Q Okay. And, so, you're saying that if you had seen something, then that would have given you a -- perhaps an avenue to look at in terms of IRS investigative authority. Is that what you're saying? If you had seen something relating to that particular violation, that might have led you to possible violation on the IRS?

A Wait a minute, I think we've got crossed because I wasn't talking about the box, those records. I thought that you were talking about everything that I ever heard or seen or whatever.

Q Okay.

A But now back to the box, I don't -- maybe if you'd start over with that.

Q Okay. Did you see anything from the records in the box that would lead you to believe there was

prosecution potential for Mark B. Rasmusson under the IRS' investigating authority?

A No, I didn't.

Q And the same question in regard to Debra Rasmusson. Did you see any potential there?

MR. ROBINSON: Miss Sheppard, I think it would be fair to -- if you've got a search warrant with the inventory of the contents of that box, if you want Agent Hivick to go through that inventory, that might be the best thing to do.

Q (By Ms. Sheppard) Well, let me go on to another question, and we'll come back to that.

A Well, could I say something?

Q Yes.

A The items in the box were -- were all the kinds of things that in a -- in a tax investigation and

to -- well, to a great extent also in a money laundering investigation those are the kinds of documents that one would use as evidence, but standing alone and without anything else, I didn't see them -- I didn't see it. But they were the kind of things that you would use and that, you know, that you would like to have.

Q Okay. Now, does Customs have an air branch in El Paso, Texas? Are you –

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A Yes, they do.

Q Are you familiar with the type of aircraft that are based in El Paso Air Branch in June of 1993?

A Well, I've been familiar with aircraft they've had over the years. I can't specifically say as to June 1993.

Q Okay. Well, do you recall whether the air branch had a Cessna Citation?

MR. ROBINSON: I'll object to the form

of the question. I'm not sure that this is proper questioning on the issues of qualified immunity. If you could lay a foundation for where you're going for those questions.

Q (By Ms. Sheppard) Let me ask you this question: Have you ever been in any of the Customs' aircraft at any time between June 1993 and the present time?

A Yes, I have.

Q Okay. Have you been in the -- any of their Cessna Citation aircraft?

A Yes, I have.

Q Have you been in the Air Branch Blackhawk helicopter?

A No.

Q Now, have you participated in any operations

involving the use of Customs' aircraft in the Rasmusson investigation?

A No.

Q All right. Do you know any of the names of the pilots that --

A Yes.

Q Okay. Can you give me the names of pilots?

MR. ROBINSON: Asking about -- which time frame are we talking about?

Q (By Ms. Sheppard) We're talking about during 1990 through 1993.

A Well, let's see. Boy --

MR. ROBINSON: And, again, are we asking about pilots that Agent Hivick specifically knows was involved in the investigation that included your clients?

MS. SHEPPARD: Yes.

A Okay. No, I don't know any pilots that were involved in -- in any kind of operation against

Rasmusson.

Q (By Ms. Sheppard) Now, when the --

A Wait, let me --

Q I'm sorry.

A I'm sorry.

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Q No, go ahead.

A Okay. If you want to go back to, like, the first case, the criminal case against Mr. Rasmusson.

Q Yes.

A I do know one pilot that did surveil -- that did air surveillance on Jesse Flores.

Q Okay.

A And he was part of that case, so I suppose --

Q Okay.

A You know.

Q What was his name?

A Glen Spellis.

Q Is he with the -- I mean, with the U.S. Customs Service?

A Yes.

Q Now, what time were you assigned to the Rasmark investigation? When did you receive your assignment to participate in the Financial Task Force investigation?

A Could I see my declaration?

Q Yes.

(Counsel hands witness document.)

MR. ROBINSON: Excuse me, what was the question again?

MS. SHEPPARD: When did she first begin

to participate in the Financial Task Force investigation.

A Somewhere around April of 1992.

Q (By Ms. Sheppard) Okay. And did you participate in the OSDETF committee meeting when they approved this case as an OSDETF case?

A No.

Q Were you present at the meeting?

A No.

Q Did you talk to any individuals from the IRS who were present?

A I don't know who from IRS was present. I would imagine that my group manager at the time was there, but I couldn't say that with any certainty.

Q Okay. How many weeks did you participate in the Task Force, or how long did you participate in the Task Force?

A Well, generally, you know, you're assigned to it and you participate in it until the case is -- is

either -- you've decided, you know, you don't have a case or you continue on through trial, but sometimes you're reassigned.

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In this case I was reassigned after a period of time, and; like I said, at the same time I was assigned to two or three other OSDETF investigations plus a couple of other investigations.

Q Okay. Now, how many days a week did you participate in the Task Force?

MR. ROBINSON: Which Task Force?

Q (By Ms. Sheppard) During -- Financial Task Force, during the period of time that you worked with the Financial Task Force.

A I mean, It's not like you have a room and you walk in, and "9:00 to 5:00 today, I'm on this Task Force." It's -- you know, it's fluid. You might see

somebody or run into something or do one thing and you do it for an hour or two and you jump to something else.

During that period of time -- during the summer -- I don't know when this was, but sometime during the summer of 1992, I had a desk over at the Customs' office and I was working not only on this but on two or three other things plus I was getting ready for trial on a case that Customs was also involved in. So, during the day's time, I would work on many different things.

Q Okay. Now, who was the supervisor of the Financial Task Force at the time you were working at -- at the Task Force office?

A I don't know.

Q Okay. Have you -- are you familiar with John Peterson?

A Yes.

Q Did you have any discussions with John Peterson regarding his investigation pertaining to the Rasmussons?

A I didn't know John Peterson had an investigation on Rasmusson.

Q Okay. Now, did IRS have an open number investigation relating to Mark B. Rasmusson and the other plaintiffs?

MR. ROBINSON: I'll object to the form of the question regarding the other plaintiffs.

MS. SHEPPARD: I'll rephrase the question.

Q (By Ms. Sheppard) Did IRS -- the IRS have an open number investigation relating to Mark B. Rasmusson?

MR. ROBINSON: Object to the form of the question as vague. What time frame are we talking about?

Q (By Ms. Sheppard) Okay. Let me rephrase this way: At the time that you became a member of the

Financial Task Force, did IRS open a case pertaining to the same investigation?

A What same investigation?

Q The Financial Task Force investigation pertaining to Mark B. Rasmusson, Debra Rasmusson --

A At the time -- this is -- this -- that question isn't right. I mean, I can't answer that because it's -- the whole basis of it is not right.

Q Okay. When you -- when the IRS became a member of the Financial Task Force --

A Uh-huh.

Q -- did IRS also open up a separate case file on the investigation pertaining to Mark B. Rasmusson?

A At the time IRS became a part of that OSDETF

investigation, to my knowledge there was no investigation of Mark Rasmusson.

Q Okay. Now, from your work that you did on the Financial Task Force, was Mark Rasmusson ever the subject of a criminal tax investigation?

A Criminal tax investigation, no.

Q Was Debra Rasmusson?

A No.

Q Andrew A. Gantkessy?

A No.

Q Rasmark Jet Charter, Inc.?

A No.

Q Okay. Did you ever refer Mark Rasmusson to IRS examination division for a civil audit?

A No.

Q Debra Rasmusson?

A No.
Q Andrew A. Gantkessy?
A No.
Q Rasmark Jet Charter, Inc.?
A No.
Q Okay. Did you ever fill out a case initiation document relating to Mark B. Rasmusson?
A No.
Q All right. And Debra Rasmusson?
A No.
Q Andrew A. Gantkessy?
A No.
Q Or Rasmark Jet Charter, Inc.?
A No.
Q All right. Did you ever review the tax returns for the Rasmussons?
MR. ROBINSON: Object to the form of the question. Rasmussons or which -- are you talking about both or in particular Mark or

Debra?

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Q (By Ms. Sheppard) Okay, let's -- we'll take one at a time. Did you ever review the tax returns for Mark R. Rasmusson?

MR. ROBINSON: I also object to the vagueness of the question. What years are you specifically asking for?

Q (By Ms. Sheppard) Did you ever review the tax returns of Mark B. Rasmusson pertaining to the Financial Task Force investigation for any years?

A I don't know. I have a feeling that I have seen some of his tax returns, and I don't know whether it would have been his personal returns or business returns. I -- I have a feeling I've seen some of them. I don't know what years, which ones.

I couldn't tell you anything that was on

them. I'm not even for sure I've seen them. I just have a feeling that I did look at some, but I don't -- it -- it didn't make a big impression on me whatever it was.

Q Do you have that same feeling regarding Debra Rasmusson?

A Only if she had filed a joint return with her husband, would have -- but I don't recall anything separate.

Q Okay. What about Andrew A. Gantkessy, did you review --

A No.

MR. ROBINSON: What was the question, about -- regarding Andrew Gantkessy?

Q (By Ms. Sheppard) Yes. Did you review any tax returns of Andrew A. Gantkessy?

A I don't know who Andrew Gantkessy is.

Q Okay. Now, outside of IRS did anyone on the OSDETF task forces have access to income tax returns that you might have reviewed?

MR. ROBINSON: Object to the form of the question. Are you asking her whether she reviewed any tax returns, or did she know whether anybody had access to those tax returns?

Q (By Ms. Sheppard) Did any member of the Financial Task Force ask you to obtain the tax returns for the Task Force to review?

A I don't recall that. If -- if that had happened, then there would have been an ex parte order from the Judge giving us authorization to -- IRS authorization to show them to agents from another agency. I don't have any recollection of it. You know, I just don't know.

Q Okay.

MR. ROBINSON: Miss Sheppard, I'll again

ask you, when you've found an inventory of that box, is there any specific question you can ask her on the box? If she could look at the inventory --

MR. COLEMAN: She could tell if there's any income tax returns in the box by looking at the inventory.

MS. SHEPPARD: Okay. Well, I don't have any further questions on that right now.

MR. ROBINSON: For the record, the inventory of the box has been located. Miss Sheppard is not allowing Agent Hivick to review that to see if there are any tax returns on that inventory.

(Counsel hands witness document.)

Q (By Ms. Sheppard) Agent Hivick, you may review the records if that will help you to recall any information regarding your review of tax returns for Mark B. Rasmusson or Debra Rasmusson or Rasmark Jet Charter, Inc.

A (Witness reviews document.)

Q Okay.

A There are some tax returns in here.

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Q Okay. Do you recall whether you found any information from -- from those documents that indicated -- that led you to believe that Mark B. Rasmusson engaged in tax evasion?

A No, I didn't see anything.

Q Okay. Do you --

A But like I say, these are incomplete records. I mean, for instance, there aren't -- the tax

returns aren't here. Had you had tax returns to compare to here, you might have been able to see something; but these records by themselves, no.

Q Okay. Did you see anything in those records that led you to believe that Mark B. Rasmusson or Rasmark or Debra Rasmusson were engaging in money laundering activities?

A Not from these records I didn't.

MR. ROBINSON: Miss Sheppard, I request that that be marked as an exhibit to this deposition if you're going to ask questions regarding the inventory.

MS. SHEPPARD: We'll mark the inventory as Plaintiff's Exhibit 5, P-5.

(Whereupon Deposition Exhibit No. P-5 was marked for identification and is attached hereto.)

Q (By Ms. Sheppard) Did you have any concern about Mark B. Rasmusson and Debra Rasmusson's lifestyle?

MR. ROBINSON: I'll object to the form of the question, that's vague. I'm not sure it has anything to do with the issue qualified immunity in the IRS portion of this investigation.

Q (By Ms. Sheppard) Okay. Let me rephrase the question and ask it this way: Did you ever determine that the Rasmusson's or Andrew Gantkessy were living beyond their means of reported income?

MR. ROBINSON: Again, I'll object to the form of the question. It's vague. Are you asking her if she ever drew the conclusion or saw any evidence that might lead -- that might be used in that type of investigation?

Q (By Ms. Sheppard) Okay. In Special Agent

Frost's affidavit, he indicates that he had information showing that the Rasmusson's were living beyond their income.

Did you find any information from your investigation of the records that you reviewed that he had unknown sources of income?

MR. ROBINSON: Again, I'll object to the form of the question. Are you asking her if

she knows whether Agent Frost has alleged that, or are you asking her to assume that those individuals were living beyond their means?

Q (By Ms. Sheppard) Let me ask you this question: Have you ever developed any factual basis that the Rasmusson's or Andrew Gantkessy were living beyond their reported income?

A I don't -- I never prepared any kind of a cash flow analysis or any kind of analysis to determine what their reported income was and what their expenses were to make any kind of conclusion like that. I didn't do anything like that.

Q Okay. Can you answer just whether, based on your review of the documents that you saw, did you see anything to indicate that they were living beyond their reported income?

MR. ROBINSON: I'll object to the form of the question. Which documents are we talking about?

Q (By Ms. Sheppard) Okay. Let me ask you this question: Did you ever give any advice to Special Agent Frost that the Rasmusson or that Mark B. Rasmusson were evading income taxes?

A No.

Q Or that Debra Rasmusson was evading income taxes?

A Not that I recollect.

Q Or Rasmark Jet Services -- Jet Charter, Inc., was evading taxes?

A No, I don't think so.

Q Did you ever recommend, based on your review of the documents in the box, recommend prosecution of Mark B. Rasmusson for violation relating to Form 8300?

A No.

Q Or Form 4789?

A Did I recommend prosecution?

Q Yes.

A No.

Q Okay. Or Form 4789?

A No.

MR. ROBINSON: For the record, would you

identify those form numbers, please.

MS. SHEPPARD: Okay. Form 8300 is the violations of the -- let's see, the reporting requirements for coming in or -- oh, in the trader business.

Q (By Ms. Sheppard) You're familiar with Form 8300, are you not?

A Uh-huh.

Q Okay. What is the Form 8300?

A It's a form that businesses fill out when they receive more than -- $10,000 or more in currency as part of their business.

Q Okay. And what is Form 4789?

A I believe the 4789 is the CTR. It's the Currency Transaction Report.

Q Right. Okay, CTR.

Did you participate in any of the trash pick ups relating to Mark B. Rasmusson's residence?

A No.

Q Were you present at the Customs' office on May 23rd, 1992, when Debra Rasmusson was there?

A I have never seen Debra Rasmusson to my knowledge.

Q Okay.

A But, now, I don't know that date and I don't know if I could have been at that office that day, but if I were there, I didn't see her.

Q Okay. Now, in your declaration you stated that you did just a cursory review of the records in the box. Why didn't you prepare work papers, the -- a cash flow analysis or any type of analysis you could have done from those particular records?

A Well, at the point that I was at in the –

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

MARK B. RASMUSSON, et al., Plaintiffs,	*	
VS.	*	CIVIL ACTION: EP-95-CA-475-F JURY DEMAND
LAWRENCE E. FROST, et al., Defendants	*	

DEPOSITION OF FRED SCHROEDER

January 17, 1997

Q Drug smuggling.

A Yes, ma'am.

Q Okay. Have you worked any cases in the past pertaining to money laundering activities?

A Yes, ma'am.

Q Are you familiar, then, with the fact that often in money laundering cases that financial records and documents are used to determine whether these -- any criminal activity is taking place?

A Yes. There are -- there's several types of analysis that are done on them.

Q Okay. Did you have any type of analysis done on the records from Rasmark to determine if they reflect any type of criminal activity relating to drug smuggling or money laundering?

A As I stated to you earlier, Lee Whitess and

Hector Barrera did examine the documents.

Q And did you get a report from Lee Whitess or Hector Barrera?

A I don't believe there was a written report.

Q Okay. What about pertaining to tax evasion. Did you get a report? Did anyone do a analysis to determine if those records reflect tax evasion?

A I don't know.

Q What about mail fraud? Did anyone do an

analysis to determine that those records reflect mail fraud?

A The original records that were from --

Q The records subpoenaed by DEA from Albert Apodoca?

A I don't know what type of analysis DEA did during that investigation.

Q My question is: Did the Financial Task Force do any type of analysis on those records?

A I don't know whether we ever got all of the records from the DEA or any of the records that they subpoenaed from DEA.

Q So, is it your testimony then that you have not seen any type of analysis reports pertaining to those records performed by Financial Task Force members?

A Pertaining to the original subpoenaed records from DEA?

Q Yes.

A No, I have not seen a report on those.

Q Okay. Did you check any of the court records pertaining to lawsuits for Rasmark Jet Charter Service or for Mark B. Rasmusson?

A Yes, I did see some lawsuit records during the course of the investigation.

Q Okay. And did you do any type of follow-up

to determine whether they reflect information regarding his sources of income?

A I believe we obtained the documents and read them to see if there was any listing of sources of income in there.

Q And did you find any information that led you to the sources of his income?

A To specific sources of income?

Q Yes, for Mark B. Rasmusson?

A The one thing that comes to mind is the inheritance was listed in the --

Q Okay. And did you find any information that led you to believe that the inheritance was not a legitimate source of income for Mark B. Rasmusson?

A No, ma'am.

Q Okay. Did you check the real property records including mortgage liens or tax records?

A Yes, we did check the mortgage liens and some tax records.

Q Did you find any records in the name of Mark B. Rasmusson or Rasmark Jet Charter, Inc.?

A Yes, I believe there were some records.

Q Did you do a follow-up to determine whether those were legitimate transactions, or were they pertaining to any type of illegal activity?

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A We did follow-up on the purchases, yes.

Q Were any -- did you make any determination whether those -- any of the properties that you reviewed were the product of -- were proceeds of unlawful activity, criminal activity?

A I don't know whether we tried to prove whether they were proceeds of illegal activity or not.

Q Well, this was a money laundering

investigation; isn't that correct?

A Yes.

Q And isn't one of the ways you detect money laundering is looking at the property to see if it represents proceeds or some specified unlawful activity?

A Yes, it is.

Q Did you find any such unlawful proceeds -- did any of this property represent unlawful proceeds pertaining to Mark B. Rasmusson?

A Not to my recollection we did not.

Q Any proceeds -- any of the Rasmark Jet, Inc., property, did you find any of it related or constituted proceeds from unlawful activity pertaining to money laundering or drug smuggling?

A Not that I know of.

Q Okay. Did anyone else on the Task Force bring to your attention any evidence that indicated to

you that any of Mark B. Rasmusson's or Debra Rasmusson's property or Rasmark Jet Charter, Inc., property was proceeds of unlawful criminal activity pertaining to money laundering or drug smuggling?

A I can't answer that entire question because of ongoing investigations.

Q What type of ongoing investigation?

A Ongoing criminal investigations.

Q Against whom?

A I can't answer.

MR. ROBINSON: I object to the form of the question. He's not authorized to testify about that.

Q (By Ms. Sheppard) Well, do you have an ongoing investigation against Mark B. Rasmusson?

MR. ROBINSON: I object to the form of the question. He cannot testify regarding

that.

Q (By Ms. Sheppard) Okay. Did you check out the Secretary of State records.

A I did not.

Q Okay. Now, you stated that you did review some of the criminal trial records from the original criminal case against Jesus Flores. Did you interview Ronnie Stinet (phonetic) or Juan Castillo of the

Q Okay. Now, what were you doing prior to this investigation? Were you in El Paso?

A Yes, ma'am, I've been assigned to El Paso since 1987.

Q Okay. Did you assist John Peterson in any of his investigation of Mark B. Rasmusson?

A No, ma'am, I did not.

Q Okay. Did you ask him for all his case

files?

A No, ma'am, I did not.

Q Did you discuss Mark B. Rasmusson with John Peterson at all?

A No, I don't believe I did.

Q Now, what was your responsibility with the Financial Task Force? I know you stated that you were the team leader, but what were your specific duties? What part were you supposed to handle?

A The coordination of that particular portion of the investigation.

Q And that portion pertaining to what?

A Mark Rasmusson and the Rasmark Jet Charter.

Q Okay. And when you said to organize that exactly, were you to organize the people, organize the assignments? What part were you doing?

A Organize the people, gave out assignments as

agreed upon by myself and, of course, Larry Frost who was the overall case agent.

Q Okay. Now, in your declaration you refer to task force participants. Can you give me the names of the two El Paso County deputy sheriffs that you're referring to as participants?

A Detective Neil Baker and Detective Jerry Keith.

Q Okay. And you also referred to FBI special agents. Who were you referring to in your declaration as FBI special agent?

A Joe Acosta.

Q Did these individuals you just named, Neil Baker, did he work full time on the case?

A Yes, he did.

Q Did Jerry Keith work full time on the case?

A Yes, ma'am.

[App. 576-577 omitted]

Q Okay. What about Joe Acosta? Did he work full time on the case?

A Joe Acosta had other assignments during that period of time also.

Q Did you conduct a vehicle or fix surveillance from the Rasmusson residence -- of the Rasmusson's residence on 11157 Leo Colins?

A What -- I don't really understand what

you're --

Q Okay. Did you conduct surveillances of Rasmark residence on 11157 Leo Colins Drive?

A Yes, we did.

Q And how were those surveillances conducted? Were you in a fixed location?

MR. ROBINSON: I'll object to the form of the question. You're asking for

investigative techniques. He's not authorized to testify regarding those.

Q (By Ms. Sheppard) And approximately how many surveillances did you conduct of the Rasmusson residence?

A I don't recall a number.

Q Was this just a periodic or was it a continuous surveillance?

A It was periodic. It was not continuous.

Q Okay. And over what period of time did you conduct a surveillance of the Rasmusson residence?

A During the period of time that I was assigned to the Financial Task Force?

Q Yes, what -- yes, what period of time -- over the period of time that you were assigned to the Task Force, what period of time out of that did you conduct these surveillances?

A They were periodic surveillances during my tenure at the Task Force.

Q And when was the last surveillance conducted of the Rasmusson residence?

A It would have been in November of 1993.

Q Okay. Now, from all of the surveillances that you conducted, what information did you obtain that led you to believe that Mark B. Rasmusson was participating in either drug smuggling or money laundering?

A Part of what we're referring to as a periodic surveillance was obtaining the residential trash from that location. We found drug paraphenalia in the trash, pipes that tested -- had residue that tested positive for cocaine, marijuana, heroin.

Q Okay. And which one of those -- well, let me ask you this: Did you gather up that evidence and

then turn it into the evidence room?

A Yes, ma'am, I did gather up the evidence.

Q Okay. And did you maintain a chain of custody on the evidence?

A Yes, ma'am.

Q And the evidence is in the evidence room today, as we speak?

A Yes, ma'am, the evidence is in the evidence

supervisor?

A On the telephone one time, yes, ma'am.

Q And how many times have you obtained this approval? How many times -- do you have to request for each occasion that you want to pick up the trash or do you just make one blanket request and they approve one blanket request for you to pick up trash as many times as you want to?

A You submit a request saying that you're going to receive trash from a specific location. You make your arrangements and when your investigation is concluded or when you no longer need that, then you just tell the truck that you won't be back anymore.

Q Okay. Now, do you get the names of the sanitation drivers, the truck drivers that pick up the trash?

A No, ma'am.

Q Do you make -- now when you contain all these -- in Frost's affidavit he lists all these documents that he obtained out the trash from your pick ups, trash pick ups?

A Yes, ma'am.

Q Did you log all those documents into evidence?

A Yes, ma'am.

submit any of these documents to document analyst to determine if there was any criminal activity relating to money laundering in those documents?

A What kind of document analysis?

Q To determine if the documents represent or reflect any type of criminal activity pertaining to money laundering or drug smuggling.

A We don't routinely submit just any document for analysis. One single document won't stand on its own as evidence.

Q Well, according to the affidavit you had -- you seized numerous documents from the trash, so you have more than one. Did you put all those documents together and have them analysed to see if you determine whether they represent any money laundering activities or drug smuggling activities?

A No, ma'am. We did not submit them to any

outside entities for any kind of analysis.

Q Okay. What about custom document analyst. Do you have any -- well, you had Fonda Hivick of the IRS on the Task Force team, CPA and qualified in document analysis. Did you submit those documents to her for analysis?

A I don't believe Agent Hivick was on the -- on the Task Force when I was assigned. If she was, it

was only for a short time.

Q What about Agent Rebecca Aguirre?

A I don't know how much of the documents she went through while she was there.

Q Okay. Did you receive any reports back from any agent's review of the documents that indicated to you that they detected -- the documents reflected some type of criminal activity pertaining to money laundering or

drug smuggling?

A I never got any written reports on that specifically, no.

Q Did you personally identify any documents yourself that you -- that led you to believe that Mark B. Rasmusson or Debra Rasmusson were engaging in some type of drug smuggling or money laundering activities?

A We found foreign banking, foreign bank account documents that came out of the trash. As far as the follow-up on those documents, it's very difficult in foreign countries to get specific information on bank accounts.

Q Did you make any efforts to get any information on foreign bank accounts relating to Mark B. Rasmusson?

A I believe Agent Frost testified that, yes, he did make that effort.

Q How many foreign bank accounts did you uncover in Mark B. Rasmusson's name or Rasmark Jet Charter, Inc., name?

A The only one that I'm aware of is a Mexican account.

Q And whose name was that bank account in?

A I believe it was Mark Rasmusson's name.

Q And did you find any information that led you to believe that that bank account would have been used for money laundering activities?

A Without having the entire documents from the bank account, I can't -- I can't say whether there was any information or not about that.

Q After all the records were seized on November 22nd, 1993, did you review those records to see if you saw any documents from Banamex Bank, I assume that's the bank you're speaking of; is that correct?

A Yes, ma'am.

Q Did you find any records in the -- from the November 22nd, 1993, seizure?

A Yes, ma'am, there were a few.

Q Okay. And did you detect anything in those records that would have led you to believe that they were engaging in money laundering activities?

A Once again, ma'am, those records were

incomplete; and we did not obtain the entire account.

Q Now, you recall the interview Andy Gantkessy in June -- on June 2nd, 1993?

A Have you got a document that I can refer to?

MS. SHEPPARD: Yes, we'll mark this as --

(Whereupon Deposition Exhibit No. P-10 was

marked for identification and is attached hereto.)

Q (By Ms. Sheppard) Do you recall that interview?

A Yes, ma'am, I do.

Q Okay. Did you prepare the Customs' report relating to the interviews of June 2, 1993, and June 3rd, 1993?

A Yes, ma'am, I did.

Q Did you make an appointment prior to that interview with Andrew Gantkessy?

A Which interview are you speaking of?

Q June 2nd, 1993?

A Prior to the June 2nd interview?

Q Yes.

A No, ma'am, I did not.

Q If no, why not? Since you said no, why not?

Why didn't you make an appointment?

A I was not running that specific interview. That was being handled by Agent Frost.

Q Okay. Now at the time that interviewed occurred was Andrew Gantkessy a target of investigation by the Financial Task Force?

A I don't believe he was a target. I believe he'd come up in connection with the activities of Rasmark Jet Charter.

Q Okay. Was -- were any other agencies participating in the Financial Task Force targeting Andrew Gantkessy as participating in any type of criminal activity?

A Not to my knowledge.

Q Okay. Now, how many agents -- agencies participated in that particular interview of June 2nd, 1993?

A There were three different agencies.
Q How many agents were there?
A Five -- four special agents and one detective.
Q Okay. So, what was the purpose of having so many agents at this particular interview?
A There was no specific number assigned to it. As Special Agent Frost testified to, there were people in

the area at the time that the interview came to occur, and these are the people that were there and the people that proceeded inside during the course of the interview.
Q So, you're saying there were agents at Ford Motor Company at various locations and they just converged at Andrew Gantkessy's office?
A No, ma'am.
Q How did they know to come to that particular location?

A Agent Frost told us that he was going to go in there and talk to Mr. Gantkessy.

Q Okay. So, this happened at a prior time then that he contacted each of these agents and told them that he was going to be there?

A Yes, I believe so.

Q And now, prior to this interview were you or the Task Force members aware that Andrew Gantkessy suffered from several heart attacks in the past?

A No, ma'am.

Q And what was the basis -- what information were you expecting to get from Andrew Gantkessy on June 2nd, 1993?

A To find out if, in fact, that there had been payoffs and the purpose of the receiving of the money, any other information he could provide us.

Q Okay. Now, what Federal violation were you investigating at that time in relationship to payoffs to Andrew Gantkessy?

A Once again it would depend upon how the money was used and why the payoff was made, is what we're looking into.

Q Pertaining to what Federal violation?

A Well, did it cause the false tax reports to be filed? Was there interstate commerce violations?

Q Okay. And did you --

A Or international commerce violations.

Q Okay. Now, if you were concerned about false tax violations, why wasn't the IRS agency there to participate in the interview?

A Which interview are you talking about?

Q June 2nd, 1993?

A June 2nd was just a preliminary interview.

Q Now, if you suspected that Andrew Gantkessy was involved in any type of illegal payoff, shouldn't he have been advised of his rights?

A What I said was we were there to determine if there had been any, not that he was a suspect. We were trying to find out what exactly had occurred.

Q Okay. And did you attempt to, in your -- let's see, why did that interview end on June 2nd, 1993?

MR. ROBINSON: Excuse me. Was the question "Why"?

Q (By Ms. Sheppard) Did it end abruptly? Why didn't you complete your interview of June 2nd, 1993?

A For that part of the interview we did complete it.

Q Okay. And what information -- what additional information did you need from Andrew Gantkessy that you did not get in June 2nd, 1993?

A Specific amounts, if he could remember any dates, any other people.

Q Okay. And did you personally request that he come to the Customs' office on June 3rd, 1993?

A I believe I gave Mr. Gantkessy a business card and we made arrangements that he would call me and come down on the following day which was June 3rd.

Q When you say you made arrangements, how were the arrangements made?

A Verbally.

Q Yes. Did you tell him to come down there?

A I requested him to come down, yes.

Q Okay.

A I did not order him.

Q All right. Now, once he was at your office on June 3rd, 1993, did you attempt to recruit him to wear

a wire tap?

A To do what?

Q To wear a -- to tape -- to wear a wire to tape conversations between him and Mark Rasmusson or Debra Rasmusson?

A (Witness reviews documents.)

Q Let met ask you this question: How often in the past three years have you interviewed a suspect not in custody with five or more agents? Is that a common occurrence?

A Sometimes it does occur, yes, depending upon the situation especially if it's in a Task Force environment; and as I previously testified at that time, I didn't classify him as a suspect. I said that we wished to find out what his involvement was and what was going on. I never used the word "suspect."

Q Did you ever advise Andrew Gantkessy that he could possibly lose his job because of his involvement with Mark Rasmusson?

A No, ma'am, I don't know what the policies

were at Ford Motor Company.

Q Did you ever ask Andrew Gantkessy to cooperate with you and to wear a wire to tape conversations?

A I don't find that in my report, and I do not

believe that I did so.

Q Okay. Did you tape the interview of June 2nd, of 1993, with Andrew Gantkessy?

A As I said I was not running the interview on June 2nd, 1993. I did not tape it.

Q Was it taped by any other member that participated in that interview?

A Not that I know of.

Q Did you take notes?

A Yes, ma'am.

Q Okay. And do you still have those notes?

A I don't know whether I do or not. I transferred all notes or documents into the report of the investigation that you provided me here.

Q Okay. Did any of the other members take notes? Do you recall?

A I do not know.

Q Okay. Were any threats made to Mr. Gantkessy pertaining to if he failed to cooperate that he would be arrested?

A Not to my knowledge.

Q If he didn't agree to the interview on June 3rd, 1993, were any threats made to him if he failed to come to your office on June 3rd, 1993?

A Not to my knowledge.

Q Okay. Now, how long did the interview last on June 2nd, 1993?

A Just a very few minutes.

Q Five minutes?

A I don't know specific time. It was less than 15 minutes.

Q Okay. How long did the interview last on June 3rd, 1993?

A I believe it was approximately an hour to an hour and a half.

Q Okay. Did you ever ask Andy on the occasion of June 3rd, 1993, to be wired so that you could monitor the telephone conversation between him and Mark B. Rasmusson or any -- or Debra Rasmusson or any other employee that answers Rasmark telephone?

A No, I don't recall doing that.

Q Did you ever ask him to wear a wire at all?

A No, ma'am, I don't recall asking him to wear a wire.

Q Did Joe Acosta ask him to wear a wire to monitor telephone calls?

A Not that I recall.

Q Now, did you attend the meeting with Ford management officials including T. M. Ponnaville on September 24, 1993?

A I met with some Ford officials. I don't recall what date that I talked with them.

Q Okay. Do you know who scheduled that meeting?

A No, ma'am, I don't know who scheduled it.

Q Did Ford contact U. S. Custom Service or did the U. S. Custom Service contact Ford?

A As I stated I don't know who scheduled the meeting.

Q Okay. What was the purpose of the meeting?

A I was told by Agent Frost that they wanted some more information about a letter that had been

forwarded to them concerning the interview of Andy Gantkessy.

Q Okay. And on that occasion what information -- additional information did you tell them?

A I don't recall giving any additional information to them. They asked me if I had, in fact, interviewed him, and I stated, yes, I had.

Q And where did this meeting take place?

A I believe it was at the El Paso International Airport, a patio area.

Q Okay. And that's the sum and substance of the conversation that you can remember? That's all you recall that you said? Is that all you said to Ford to

Tom Ponnaville.

A As I told you, I don't remember who was there.

Q Okay.

A I did talk to some people from Ford, and I related to them the information that I just told you.

Q Did you recommend that the Ford officials speak to Bob Hunter?

A Yes, I believe I did.

Q Okay. What was the basis of that recommendation?

A To follow-up on possible information.

Q What information?

A Payoffs by the Rasmussons to Andy Gantkessy.

Q Okay. So, did you interview Bob Hunter?

A Yes, I did.

Q And what information did he tell you?

A He told me that Mark Rasmusson had told him that Debbie Rasmusson was paying Andy Gantkessy but he did not condone the payments.

Q Okay. And what follow-up investigation did you do to coroborate this information?

A As I stated to you earlier, Chris Hines told me that and Andy Gantkessy, himself, told me that he had received payments from Debra Rasmusson.

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Q Did you ever obtain any records to document these payments?

A I don't recall whether we got specific records or not.

Q Okay. Now, the -- did you -- let me ask you this: Did you tell the Ford officials that Andy Gantkessy would most likely have major problems with IRS because it would be established that he had been receiving payoffs from Rasmark?

A I don't recall making that statement the way it's worded.

Q Okay. Well, how did you state anything pertaining to Andrew Gantkessy might be investigated by

IRS for payoffs or for tax evasion or anything relating to laws that are carried out by -- that are enforced by IRS?

A The way I recall the question was -- is I was asked if there were -- was any information to indicate that he had declared it on his taxes; and I said "I believe Mr. Gantkessy told me, no, he had not." I did not make any speculations about what would or would not be done.

Q Okay. Now, did you follow up and get -- order tax return forms to see -- to coroborate to see if any information, any income was reported beyond what he

earned from his job?

A I don't remember whether we got his tax returns or not.

Q Okay. Okay. Now, this statement you just

stated in regard to Andy said he wasn't reporting it, did you put that in your report?

A (Witness reviews document.) No, ma'am, I did not.

Q Okay. Did you report that information to IRS for them to follow-up on?

A As I stated earlier IRS was a member of the Task Force and all this information was available to them. I did not go to a specific agent.

Q How would they know it if it's not in the report?

A They would not.

Q Okay. Did any criminal prosecution come out of the information that you obtained from Mark B -- from Andrew Gantkessy regarding these payoffs that you said he told you about?

A No, ma'am, not to my knowledge.

Q Was it ever documented that Andrew Gantkessy received kickbacks from Rasmark Jet Charter, Inc.?

A All the payoffs that were received were documented, yes, ma'am.

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Q Okay. The only ones you're speaking of is what you have in your report --

A Yes, ma'am.

Q -- is that correct? All right. Now, the records that FBI subpoenaed from Ford Motor Company, did you review those records?

A No, ma'am, I did not.

Q Were you aware that all of those records contained all the invoices pertaining to the business between Rasmark and Ford Motor Company?

A As I stated, I did not review the records. I don't know what they contained.

Q Okay. Did you tell Ford Motor Company that

Mark Rasmusson, in a moment of anger over a pending divorce, made the statement to Hunter that Andrew Gantkessy got paid off big time. Did you tell that to Ford?

A No, ma'am, I don't believe that's the way I stated it.

Q How did you state it?

A As I told you earlier, I received information from Bob Hunter that Mark Rasmusson had indicated that Andy Gantkessy was being paid by Debra.

Q Did you tell that to the Ford officials?

A Did I tell them what?

court when I was subpoenaed.

Q Okay. Did Ford Motor Company provide you with any investigative leads pertaining to Mark B. Rasmusson?

A No, ma'am, they didn't give me any leads.

Q Under what Custom policy would you testify on behalf of Ford about Andrew Gantkessy's activities?

A As I just stated, I told the Ford employees that if I received -- if I received a subpoena from court, from a court, that the subpoena would be taken to the U. S. Customs regional counsel and I would be told what I could or could not testify to.

Q Okay. What firsthand evidence, what personal knowledge did you have of any Andrew Gantkessy's activities that you could testify to?

A I could testify to Andrew Gantkessy's statements about receiving payoffs from Mark and Debra Rasmusson.

Q Okay. And did that -- did anything he said to you in that interview represent a violation of the -- any of the U. S. Customs laws?

A Once again, it would depend on why the payoffs occurred and what paperwork or what other actions

were caused by those payoffs.

Q Did you obtain any kind of independent

corroboration that Andrew Gantkessy were participating in mail fraud?

A Once again, it would depend upon what paperwork was filed and if it was mailed, if the payoffs caused some kind of paperwork to be filed or mailed whether that would be mail fraud.

Q Well, did you obtain any independent evidence of it? Did you ever get any kind of corroborating evidence?

A No, ma'am, I don't recall any at this time.

Q Did you obtain any kind of corroborating evidence of kickback schemes between Andrew Gantkessy and Mark B. Rasmusson or Debra Rasmusson or Rasmark other than what you just testified to, what's in your report?

Did you get any other independent corroborating evidence?

A Yes, ma'am, I do recall some pieces of paper that were seized during the execution of the search warrants that show that Andy Gantkessy was receiving some money from the Rasmussons.

Q Okay. And do you have those piece -- were those pieces of paper identified and entered into your evidence records?

A Yes, they were.

Q Did you maintain a chain of custody on those pieces of paper?

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A Yes, we did.

Q What do those pieces of paper say?

A One is a receipt from Las Vegas with a handwritten notation across the top "Andy's expenses," I'm not sure how the notation is written. "Expenses for

Andy" or "Andy's expenses"; and then there's a check corresponding with the same amount on it said, "Due owners" on top of the receipt.

Then there's a corresponding receipt for a check where the Rasmussons received the same amount back from a business checking account.

Q Okay. And did you follow-up to see if any illegal activity occurred pertaining to that check or that amount of money that he received for expenses?

A No, ma'am.

Q Okay. Now, does the Custom Service investigate mail fraud?

A We investigate a variety of laws; and under a task force situation such as this, it would come into the --

Q Does the Custom Service have a statutory authority to investigate mail fraud?

A I don't know whether we would under a Task Force situation or whether we'd rely on the U. S. Postal

inspectors to do that.

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

MARK B. RASMUSSON, et al., Plaintiffs,	*	
VS.	*	CIVIL ACTION: EP-95-CA-475-F JURY DEMAND
LAWRENCE E. FROST, et al., Defendants	*	

DEPOSITION OF JAMES HOLLAND

January 17, 1997

A But it wouldn't be the same unit he was in.

Q Did you ever have any occasions prior to this Financial Task Force to go to Rasmark for any -- in response to any type of complaint filed by Rasmark against anyone?

A Prior to this?

Q Yes.

A To my assignment to the Task Force?

Q Yes.

A No, ma'am.

Q Now, back to George Salas, when did you first become aware of George Salas and his involvement with the Financial Task Force?

A When I came over to the Financial Task Force.

Q And what -- what day are we speaking of?

A Around January. I don't have the exact

date, but it was early around January of 1993.

Q Okay.

A And sometime after that, it wouldn't be the first day I got there; but somewhere as it progressed I learned about his involvement in the case.

Q And what information did you learn about his involvement in the case?

A What I heard?

Q Yes.

A Okay. To my recollection it involved him bringing Debra Rasmusson and a box of documents to the Customs' headquarters on the east side of town; and that's pretty much it, ma'am.

Q Okay. Now, in Frost's affidavit he stated that there was a conversation that occurred between you and George Salas in November, in fact, on November 10,

1993. Do you recall that conversation?

A From review of the documents, yes, ma'am.

Q Okay. Did you contact George Salas, or did he contact you?

A As I -- as I recall here in my -- I brought the stuff with me -- but as I recall I contacted him as directed by Agent Frost.

Q Okay. And what did Agent Frost request you -- what did Agent Frost say was the basis of his request?

A To my recollection that was during the time that Agent Frost was preparing search warrants, and he needed, you know, certain issues would come up that needed a little more clarification. So, I got hold of Mr. Salas to clarify where the -- the box of records had come from.

Q And what did Mr. Salas tell you?

A From Rasmark Jet Charter business.

Q Okay. And did he tell you whether he -- did he give you any additional information regarding the box?

A No, no, ma'am. I believe that was all I was required to ask him and get back with Agent Frost.

Q Did he discuss any other aspect of his relationship to the Rasmussons?

A Not with me, no, ma'am.

Q Okay. Did he discuss with you any his relationship to Debra Rasmusson?

A No, ma'am.

Q Did he discuss with you the fact that he acted as a -- that he was employed by the Rasmussons as a bodyguard for the Rasmussons?

A Other than that phone conversation that I already testified to, I didn't discuss anything pertaining to this case, any of the elements of this case with him.

Q Okay. Now, on the occasions that you performed the trash pick ups of the Task Force, were you alone on any of these occasions?

A No, most of the time it was two people; but sometimes, you know, court would come up at the last minute for somebody or something and -- but, ultimately, I would still connect with Agent Schroeder.

Q Okay. And did you make a request to the

Q Okay. And did you do any trash pick ups at the Rasmark business location at 6805 Boeing Drive?

A Not to my knowledge.

Q Okay. Now, in your declaration you state that you picked up residential trash from 11157 Leo Colins, El Paso, Texas, on May 13, 1993, June 17, 1993, and June 28, 1993. Are these the only dates that you conducted the trash pick ups?

MR. BAKER: It's on page 2 of your affidavit, your affidavit.

A Give me a minute ma'am, please, I just have to confirm your -- I'm sure I picked -- no, I picked up the trash more times than that, ma'am.

Q (By Ms. Sheppard) Okay. Now, back to picking up the trash. How far from the house did you meet the sanitation worker to get the trash?

A If you're familiar with it, it's in, like, a horseshoe configuration. So, it would be right around the corner. The trash man would come up west there and then make the horseshoe and go back east. We would be around the corner.

Q Okay. And do you have names of any the sanitation workers that you retrieved the trash from?

A Not that I recall, no, ma'am.

Q Did you write any reports relating to your

retrieval of the trash?

A No, ma'am.

Q Do you, yourself, go through the trash and identify what documents or objects were in the trash?

A After learning on-the-job training, yes, ma'am, I would look for intelligence information.

Q Okay. And what type of on-the-job training were -- are you speaking of?

A Well, as the Task Force progressed, I became more experienced, learned more about financial crimes and so forth; and, you know, I would know that certain documents, particularly banking documents, things like that, would be necessary for me to show to the case agent.

Q I see. And, so, as you're becoming more experienced in going through the documents, did you identify any documents that you felt were pertaining to

money laundering activities?

A That wasn't for me to determine, but, no, I'd say no.

Q Okay. Did you log in each and every document and object that you took out of the trash?

A That was done by Agent Schroeder, ma'am.

Q So, did you just hand the bag of trash to Agent Schroeder, or did you look in the bag first?

Rasmark?

A I don't recall any conversation of that type, ma'am.

Q Did you -- did you or Agent Schroeder tell Ford officials that Bob Hunter was a willing participant who would quickly describe his knowledge of Andrew Gantkessy's cheating Ford out of large sums of money?

A I don't recall that particular statement,

no, ma'am.

Q Okay. Do you recall whether you or Agent Frost told Ford officials during your meeting that Mark Rasmusson, in a moment of anger over a pending divorce, made a statement to Hunter that Andrew Gantkessy got paid off big time?

MR. BAKER: Excuse me.

A You mean Agent Schroeder, ma'am?

Q (By Ms. Sheppard) Yes, Agent Schroeder.

MR. BAKER: Yeah, you said "Frost."

Q (By Ms. Sheppard) Oh, I'm sorry, Agent Schroeder.

A No, I don't recall that -- that remark, ma'am.

Q All right. Did you attend the -- the meeting of June 2nd, 1993, at Mr. Gantkessy's office?

A Yes, ma'am, if the record is correct, yes,

ma'am, June 2nd.

Q Okay. Do you recall where you were at the time that you were contacted about that particular meeting?

A This was the first meeting, right?

Q Yes.

A I -- to the best of my recollection I was -- I believe I was sitting in a car outside the establishment.

Q Okay. Do you recall the reason why you were sitting in a car outside the establishment?

A There was some plan at that point, and I'm not -- I don't recollect the plan in it's entirety, but it involved surveillance. So, I was there conducting surveillance.

Q You were conducting surveillance of Ford Motor Company, or you were -- who were you conducting

surveillance of?

A I was conducting surveillance and I don't recall at this time whether it was to tell when Mr. Gantkessy arrived or left or what, but I was there doing surveillance.

Q Okay.

A And it was in reference to Mr. Gantkessy.

Q All right. And who gave you that

assignment?

A It would be through the Task Force, a meeting, Agent Frost.

Q All right. And on this particular occasion, the meeting with Mr. Frost and he gave this assignment, what other -- what did he say that was the basis of this assignment?

A As I've already said, I don't recollect the

entire plan. I just recall that everybody wound up there.

Q And who is everybody?

A The people that were in -- I can look at the record. The people that were in at that first meeting.

Q Do you have a recall of who were at the meeting?

A I can -- Joe Acosta, myself, Larry -- or Agent Frost, Agent Schroeder and there may have been -- I'd have to look at the record -- somebody else. You want me to look?

Q Well, no, not at the moment. Do you take notes during this meeting of June 2nd, 1993?

A No, ma'am.

Q Okay. Do you record the meeting by tape recorder?

A No, ma'am.

Q All right. At this meeting in September -- let's see, September 24, 1993, with the Ford officials, did you or Agent Frost tell the Ford officials that it was important for them to know that the second meeting which occurred on June 3rd, 1993, with Mr. Gantkessy was at his request, that Mr. Gantkessy volunteered to volunteer all this information that -- that you told him --

MR. BAKER: Excuse me.

Q (By Ms. Sheppard) -- or that was given at the meeting?

MR. BAKER: I'm sorry. You said "Frost" again.

MS. SHEPPARD: Schroeder, I'm sorry, Agent Schroeder.

A I don't recall that statement at all. I believe if it was made, I would have recalled it.

Q (By Ms. Sheppard) Okay. Did you tell -- did you or Agent Schroeder tell, during this same meeting of September 24th, 1993, tell the Ford officials that Mr. Gantkessy was not asked, threatened or coerced into saying anything that he told you on -- on those two occasions?

A I don't recall the substance of that, no, ma'am.

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Q Okay. Do you recall the substance, any part of the conversation that took place with the Ford officials?

A To my recollection, I can't give you verbatim, per word; but to my recollection the content of that discussion pertained to a lot of the information that Ford had. I know we were in touch with Ford at that time because we were getting information and cooperation from them, and to my recollection the content was more as

to information from them and to what they were going to help us with. I don't -- these other things, I don't recall, ma'am.

Q Well, now, do you recall any information that you gave to Ford?

A We may have discussed -- any information given to them?

Q Pertaining to Mark B. Rasmusson, Debra Rasmusson.

A I know that a discussion was held, but I can't verbatim tell what it was, what information it would be.

Q Okay. Do you recall whether you told Ford Motor Company about Debra Rasmusson giving Andrew Gantkessy marijuana?

A I don't recall that, no, ma'am.

that you knew to be false or illegal. Did you prepare any reports for the Financial Task Force pertaining to Mark B. Rasmusson and the other plaintiffs?

A No, I didn't have to -- pertaining -- I didn't prepare any investigative reports, ma'am.

MR. BAKER: Except this.

A Except, yeah, for another investigation, ma'am.

Q Okay.

MR. BAKER: The El Paso Police Department Case No. 933331777.

Q (By Ms. Sheppard) And is that pertaining to money laundering or drug smuggling?

A No, ma'am.

Q Is it pertaining to tax evasion?

A No, ma'am.

Q Is it pertaining to mail fraud?

A No, ma'am.

Q Is it pertaining to violations of Bank

Secrecy Act?

A No, ma'am.

Q Are you familiar with the section in the El Paso Police Department called the Alpha section?

A Alpha?

Q Yes.

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Rasmark business, did you observe any criminal activity pertaining to drug smuggling taking place?

MR. BAKER: I'll object again and instruct him not to answer.

Q (By Ms. Sheppard) Okay. On any of the occasions that you observe -- that you performed surveillance at Rasmark Jet Charter, Inc., business location, did you observe any criminal activity relating to money laundering?

MR. BAKER: For the same basis, under

the same objection. I'll instruct the witness not to answer.

Q (By Ms. Sheppard) Okay. Now, on any of the occasions that you performed various activities, did you see any loading or unloading of the aircraft?

MR. BAKER: Are you again asking about surveillance at Rasmark as opposed to the residence?

MS. SHEPPARD: Yes. At the business location.

Q (By Ms. Sheppard) Did you see any loading or unloading of aircraft at Rasmark?

MR. BAKER: I'll again instruct him not to answer on the same basis.

Q (By Ms. Sheppard) Okay. Did you do any of

don't want to say the name without being sure.

(Witness consults documents.)

A This was prior to June, ma'am.

Q (By Ms. Sheppard) What was prior to June?

A Let me see here. So, after that I would say, no.

Q Okay. Now, prior to the interview of June 2nd, 1993, with Mr. Gantkessy, did you receive any kind of intelligence information pertaining to his background?

A Intelligence information?

Q Well, that's the term you used "intelligence information."

A Oh, okay.

Q Did you receive any type of intelligence information pertaining to his background?

A No, I wasn't, that I recall, doing any intelligence work on him at that time.

Q Okay. Did you -- prior to his interview of

June 2nd, of 1993, did you receive any information regarding anything about Mr. Gantkessy?

A Yes, ma'am, from the record I believe he was mentioned in an interview that I attended.

Q Okay. Now, what interview was this?

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A (Witness consults document.) It would be an interview of Chris Hines that I attended along with Agent Schroeder on March 16th, of '93.

Q Okay. And during that interview of Mr. Hines did he tell you anything regarding Mr. Gantkessy's medical condition?

A I'd have to read that, ma'am.

Q Do you have any recollection?

A If he told me about --

Q Mr. Gantkessy's --

A I don't have recollection without reading

the record.

Q Okay. Did you interview at any time prior to your June 2nd, 1993, interview any other Ford employees?

A Not that I recall.

Q Okay.

A Ford -- working for Mr. Gantkessy in other words?

Q Or working for Ford Motor Company in the same area.

A I don't -- I may have been present at some interview, but I don't recall specifically, ma'am.

Q Okay. Do you recall -- can you say whether -- do you recall who you talked to -- who else

A I remember that -- I don't know if that's the reason, but I remember there was a time when IRS was

gone and then IRS was back.

Q Okay. Since you were, like, on-the-job training, did you participate in the decertification of the Rasmark case?

A I'm sorry?

Q Since you were in on-the-job training in working with this Financial Task Force, did you participate in the OSDETF committee meeting pertaining to decertification of the Rasmark case?

A No, ma'am, I had nothing to do with OSDETF.

Q Did you ever meet the members of the OSDETF committee?

A No, ma'am, not to my knowledge. I may have, but I wouldn't have known who it was.

Q Okay. As part of your duties on the Financial Task Force, did you have any knowledge of association between Guierrmo Potillo and Rasmark?

MR. ROBINSON: Objection. That's privileged information. He can't answer

that.

MR. BAKER: Insofar as you're asking about any ongoing investigation it's my understanding he cannot testify. I'll

instruct the witness not to answer. I don't think he can even say whether there is or isn't an ongoing investigation.

Q (By Ms. Sheppard) All right. We're not asking about any ongoing investigation, I'm talking pertaining to the investigation about Rasmark and about Mark B. Rasmusson. Did you develop any information or were you given any information showing the connection between Mark Rasmusson and Guierrmo Potillo?

MR. ROBINSON: Same objection.

MR. BAKER: Based on that, I'll tell the

witness not to answer.

THE VIDEOGRAPHER: I have approximately ten minutes on this tape.

MS. SHEPPARD: Okay.

MR. BAKER: Strangely enough that's ten minutes till two hours.

Q (By Ms. Sheppard) Now, you stated earlier that you were asked to contact Mr. Salas regarding that box. And since you were in on-the-job training of this Financial Task Force, did you go and look at the contents of that box?

A That box, did I go look at the contents, no, ma'am. I was there sometime after the box, several months, a year. I don't -- I didn't look at it, no,

ma'am.

Q Okay.

A Not that I can recall, I didn't look at it. I may have seen a part of it here when it was out in the office, but not to study it.

Q Okay. Did you as part of your responsibilities in learning this Financial Task Force, did you review any documents pertaining to Mark B. Rasmusson that did an analysis of any records that they seized on November 22nd, 1993, pertaining -- that indicated that these records pertained to money laundering or drug smuggling?

A Is this pursuant after the search warrant?

Q Yes.

A Analysis records?

Q Yeah, analysis of those records that -- indicating that they might have found something pertaining to drug smuggling on money laundering?

A No. A lot of those documents I wouldn't even understand them if I saw them, ma'am. The accounting documents, things of that nature, you need to

be schooled in that, but, no, I didn't see any specific reports saying they have this.

Q Okay. Did you ever personally talk to Arturo Vargas?

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

MARK B. RASMUSSON, *
ET AL *
*
VS. * CIVIL ACTION:
* EP-95-CA-475-F
LAWRENCE E. FROST, *
ET AL *

VIDEOTAPED DEPOSITION OF ERIC MILLS

January 24, 1997

Q Okay. And do you recall when Deborah Rasmusson and her son was told they could leave? Do you recall that particular part of the -- of the occasion?

A No, I don't.

Q Okay. Did you escort Ian Mae outside the Customs office when -- when Deborah Rasmusson was told to leave?

MR. ROBINSON: I'm going to object to the form of the question. I think you might be mischaracterizing the -- when Deborah Rasmusson left. You said when she was told to leave. I'm not sure that's been any -- in any prior testimony. I think she just left.

Q (By Ms. Sheppard) Did someone notify you that Deborah Rasmusson was leaving and for you to bring Ian Maye out of the room where you were?

A Yes.

Q Okay. Who told you that Deborah Rasmusson was leaving?

A I don't remember.

Q Okay. When you were told that she was leaving, do you then get up with Ian Maye and take him outside the building?

A Yes, I did.

Q Okay. And when you took him outside the building, did you leave him there outside the building or what did you do next?

A No. Ian and I stood near the front

door of the building to wait for his mother to come out.

Q Okay. So you came out the building before Deborah Rasmusson came out the building?

A Yes.

Q Do you recall the approximate time that Deborah Rasmusson came out the building?

A No, I don't.

Q Was it evening time? Was it dark?

A Was it dark. I think it was dark. Yes.

Q Okay. Now, did -- were you instructed to follow Deborah Rasmusson to the Diamond Shamrock station?

A Was I instructed, no.

Q Did you go to the Diamond Shamrock

station?

A Yes, I did.

Q What prompted you to go to the Diamond Shamrock station?

A After Deborah Rasmusson and Ian left the Customs office, I had some discussion with Special Agent Frost about things that Ian had told me. And someone discovered that they had Mrs. Rasmusson's gun. And I believe the -- the -- Mrs. Rasmusson had a -- had a box of records with her. And it was -- it was my intent to return the weapon and collect the box of records.

Q Okay. Now, on what basis were you going to collect the box of records from Deborah Rasmusson?

A Well, to ask her if we could have

the box of records, first of all.

Q Okay. And why did you want that box of records?

A During my conversations with Mrs. Rasmusson's son, he repeated over and over that all the evidence needed to convict Mark Rasmusson was in that box.

Q Okay. Now, let's look at that

statement there. You said that Ian was about 14 or 15 years old at that time?

A Yes. Yes.

Q Did he indicate to you that he had been trained in criminal law?

A No.

Q Did he indicate to you whether he had been trained in any area of law at all?

A No.

Q Why do you give so much credence to such a statement made by a 15 -- or 14 or 15 year old child?

A Because he was -- Ian was attributing that to what his mother had said.

Q Okay. Now, did Ian tell you that he personally looked in that box and reviewed those records?

A No.

Q Okay. Did you personally look in the box and review those records?

A No.

Q All right. Now, who told you to ask Deborah Rasmusson for the box?

A Who told me?

Q Yes.

as vague. Are you referring to Agent Mills, specifically, or you as in Customs? How are you defining "you".

Q (By Ms. Sheppard) From your participation on the financial task force, from the activities that you participated in, did you bring charges or did you recommend any charges be brought against Mark Rasmusson for any evidence or information that you recovered pertaining to drug smuggling or money laundering?

A No.

Q Did you, from your activities, from your participation on the financial task force, did you bring any charges or recommend any charges be brought against Mark Rasmusson

for tax evasion?

A No.

Q Did you, from your participation on the financial task force, recommend or bring any charges against Mark Rasmusson for violations of the Bank Secrecy Act?

A No.

Q Did you, from your participation on

the financial -- financial task force, bring any charges or recommend any charges be brought against Mark Rasmusson for mail fraud?

A No.

Q Okay. Did you review -- are you aware of the records that were subpoenaed by the FBI from Ford Motor Company?

A No.

Q Okay. Okay. Will you read your

report beginning at 1215 hours of this particular report dated September 16, 1992.

MR. ROBINSON: For the record, which report are we referring to? Plaintiff's Exhibit -- Plaintiff's Exhibit what?

Q (By Ms. Sheppard) 15. P-15. Beginning at 1215 hours, read through 1605 hours. That's on page three.

MR. BAKER: Ms. Sheppard, while he's reading that, let me just mention something that has come up. You go ahead and read that --

THE WITNESS: I don't know if I can do that --

MS. SHEPPARD: Well, I

don't want him doing two things at one time here.

MR. BAKER: I'll wait. Okay. Okay. If it's too complicated, I'll wait and bring it up later.

THE WITNESS: Where did you want me to stop, ma'am?

Q (By Ms. Sheppard) Read through 1605 hours.

A Okay. I've done that.

Q Okay. Now, in your report dated September 17, 1992, you just read the portion at 1215 hours. A red Mercedes bearing license plate AZHSI -- I mean HSR 995 operated by two -- I'm not sure what that stands for -- HMAs. What does that stand for?

A Hispanic male adult.

Q Okay. -- arrive at Rasmark and

both men went inside. Now, were you -- did you personally observe these two men go inside?

A I do remember seeing this vehicle. Whether that's my observation of them going

inside, I'm -- I'm uncertain.

Q Okay. So you can't said where you were? Were you in position where you could personally observe them going inside? Do you recall that from reading the report?

MR. ROBINSON: I'll object to the form of the question. Agent Mills has testified previously there were several individuals involved in the surveillance. I also object to

the extent that you're asking him to reveal a location. That's privileged. It's -- you're asking him about investigative technique and he's not authorized to answer that question.

Q (By Ms. Sheppard) Now, did the participants in the surveillance prepare separate reports?

A No, ma'am. I prepared the report.

Q Okay. And do you recall whether you were able to personally observe inside the Rasmark office at the time that you saw this red Mercedes?

MR. ROBINSON: I'll object to the form of the --

MS. SHEPPARD: I'm asking

him for his personal observation.

MR. ROBINSON: I'll retract that objection. Repeat the question, please.

Q (By Ms. Sheppard) Do you recall whether you personally observed -- was able to observe inside of Rasmark office on this particular occasion when you saw the red Mercedes?

A I couldn't see inside the office, no.

Q Okay.

THE VIDEOGRAPHER: We've got approximately ten minutes remaining on this tape.

MS. SHEPPARD: Okay. Thank you.

MR. ROBINSON: That's two hours.

Q (By Ms. Sheppard) Did you identify the individuals who were in that red Mercedes?

A According to the report, one person

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is identified.

Q Okay. How do you identify -- Hector Barrera. How do you identify him?

MR. ROBINSON: Object to the form of the question. It's vague. Please clarify it.

Q (By Ms. Sheppard) Okay. Did you identify him through the license plate on the vehicle?

MR. ROBINSON: Also, I'm going to object to the form of the question. You're referring to Agent Mills. The report doesn't

[App. 654 omitted]

indicate which of the officers that were listed on the front page made the observation. Agent Mills already testified that he observed -- he remembered seeing the red Mercedes; but you haven't established whether at that time, he was observing that red Mercedes.

Q (By Ms. Sheppard) Okay. Let me ask you this question: Were you able to personally observe into the hangar of Rasmark

on this particular occasion?

MR. ROBINSON: I'm going to object to the form of the question. Again, I think you're

trying to get at an investigative technique -- investigative technique because you're asking location. If you want to ask a specific question, did he see anything inside the hangar on this particular day, you may ask that.

Q (By Ms. Sheppard) Did you personally observe the Rasmark offices through the hangar on this particular occasion?

MR. ROBINSON: I'm going to object to the form of the question. Are you asking him to assume the officers are in the hangar?

Q (By Ms. Sheppard) Did you -- did you -- did you see inside of the hangar on this particular occasion?

MR. ROBINSON: Just for the

record, what occasion are you referring to? 1545 hours?

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MS. SHEPPARD: We're still talking -- yes. We're still talking about this same date, September 16, 1992.

MR. ROBINSON: I realize that, but there are a lot of entries on that same date. Again, there are a lot of individuals listed on the first page of this exhibit that Agent Mills has already testified did do surveillance. The information was reported to him. He wrote this report.

MS. SHEPPARD: Well, I'm asking what he personally observed.

Q (By Ms. Sheppard) Did you personally observe inside of the hangar?

A Are you talking about the part of hangar where the airplanes are normally parked or in the -- can you be more specific about --

Q Did you observe --

A -- what you mean?

Q Okay. Did you observe where the

airplanes were parked?

A Well, at this time, anyone driving by on Boeing could see any airplanes parked.

Q Okay. Did you personally observe inside the structure called the hangar where

airplanes can also be parked?

A I -- I can't say whether I saw in the hangar or not on this -- on this particular date because there's no indication in my -- in my report that there was any reason for me to look in there.

Q Okay. Now, do you recall whether on this particular occasion, whether you instructed any of your agents to go inside the building?

A No, I didn't. I did not ask anyone to go inside the building.

Q Okay. You stated that -- in your report that you identify one male. How do you know it was a Hispanic male adult?

MR. ROBINSON: Again, which entry are we referring to?

Q (By Ms. Sheppard) Where you identify Hector Barrera. 1605 hours, you

25 state that the red Mercedes, white male

100

1 driving, Hector Barrera, passenger. How were
2 you able to identify Hector Barrera?
3 MR. ROBINSON: I'm going to
4 object to the form of the
5 question. Ask him if he even
6 knows Hector Barrera. He may not
7 have made this observation.
8 Q (By Ms. Sheppard) Were you in
9 charge of the surveillance activities on this
10 particular occasion?
11 A Yes, I was.
12 Q Okay. Did any of the agents
13 participating under your direction tell you
14 that that was Hector Barrera?
15 A I don't recall how I arrived at the

name of Hector Barrera.

Q Okay. Did you identify the white male that was driving the vehicle, the red Mercedes?

A Not -- no, ma'am.

Q Okay. Now, on this particular occasion, September 16, 1992, did you observe any criminal activity pertaining to money laundering or drug smuggling at the Rasmark office?

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF TEXAS

EL PASO DIVISION

MARK B. RASMUSSON, *
ET AL *
*
VS. * CIVIL ACTION:
* EP-95-CA-475-F
LAWRENCE E. FROST, *
ET AL *

VIDEOTAPED DEPOSITION OF

JOE L. ACOSTA

January 24th, 1997

members of the financial task force prior to the 6-2-93 interview. Did you participate in any of those surveillances?

MR. ROBINSON: Regarding Andrew Gantkessy?

MS. SHEPPARD: Yes.

THE WITNESS: I think I might have been out there either that -- that same morning or maybe the previous morning. But I was out at his place of business waiting for him to show up to be -- so we could talk to him.

Q (By Ms. Sheppard) Okay. Now, if the financial task force had an appointment prearranged, what was the purpose of the surveillance to -- to catch him when he --

when he arrived?

A It's my -- if I recall correctly, that appointment wasn't made until either early that afternoon or -- but it was after we had already left the premises. Because we never could find him or locate him on the premises. And we didn't want to go in. We'd rather -- we wanted to catch him away from

the -- his office so he would feel more at ease.

Q So how many agents was trying to catch him away from the office?

A If I recall, it was myself and Jim Holland, maybe Fred Schroeder. At least maybe two, three.

Q Okay. Now, did you personally try

to telephone Andrew Gantkessy to make an appointment?

A No, ma'am.

Q Okay. And why not?

A Again, we weren't the lead agency in this investigation. That was their call. That was their interview. So it was not my responsibility to.

Q Isn't it the normal procedure for FBI to call in advance and schedule appointments with witnesses that they're going to interview?

A Not necessarily. Depending on the interview.

Q Okay. Now, prior to participating in the Andrew Gantkessy interview, had you been furnished a copy of the U. S. Customs

report or told of the interview with Gail Beech on March 9th, 1993?

A I don't recall that report, no, ma,am.

Q Okay. Didn't you have access to U. S. Customs reports that were generated in this pertaining to the Rasmark investigation?

A Yes, ma'am. I just don't recall that particular one, no.

Q Okay. Did the financial task force conduct periodic briefings pertaining to the Rasmark portion of the investigation?

A Yes, ma'am. To both agencies, we would have briefings every so often to keep our supervisor apprised of what was going on?

Q Okay. Did they -- in any of these briefings, did they discuss Gail Beech?

A Not that I recall, ma'am. If I recall, we interviewed one employee. And I'm not sure if she worked for that -- the business Gail Beech or Beech Craft or -- but --

Q Here is Plaintiff's Exhibit 16 if you can --

A Sure.

Q -- scan through that and see if that would help you to recall whether Gail Beech was ever discussed during any of the briefings?

MR. ROBINSON: Ms. Sheppard, for the record, if you're going to ask questions regarding that report, I think

it's fair and I'm going to require that Agent Acosta be able to read that report before he answers questions.

Q (By Ms. Sheppard) Let me ask you this question: Did you discuss the contents of the interview that you had with Andrew Gantkessy with your supervisor, FBI supervisor?

A Yes, ma'am.

Q Okay. And what did you relate to your supervisor about that particular interview?

A Basically, Mr. Gantkessy advised us that he had received two trips to Vegas, a trip to the Super Bowl and some -- some money from Rasmark.

Q Okay. Now, do you recall that during the interview, did Andrew Gantkessy say that he won the trip from Rasmark in a raffle from Amigo Air Show that took place around that time?

A No, ma'am. I don't recall that at all.

Q Okay. Now, were you aware prior to this of 6-2-93 interview with Andrew Gantkessy, that Gail Beech alleged that Joe Sudomir and Andrew Gantkessy were engaged in a kickback scheme with Deborah Rasmusson and Rasmark and Mark Rasmusson?

A I remember that allegation, but I don't know if that was before or after Mr. Gantkessy's interview.

Q Okay. Did you ever personally

interview Gail Beech yourself?

A No, ma'am.

Q Did you do any type of follow-up investigation to obtain independent corroboration of the possible kickback scheme?

A Yes, ma'am.

Q What type of follow-up investigation did you do?

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A Actually, I had reviewed some financial documents from -- from Rasmark and one of the individuals that the checks were made out to. I had interviewed him prior to this interview. And he's the one that stated to me that he had taken these checks and cashed them because they were made out to him. He would give Deborah the money. And he

recalled Deborah telling him that the money was for Andy Gantkessy.

Q Okay. Now, who was this individual?

A Chris Hines or -- H-i-n-e-s.

Q Okay. And what financial records did you review?

A That particular documents were the Rasmark -- I think it's Bank of El Paso checking account, business account, if I remember correctly.

Q Okay. And how did you obtain those records?

A Subpoena.

Q Okay. Did FBI subpoena the El Paso Bank account? Who -- who subpoenaed the El Paso Bank account?

A I -- I don't think that bank of El Paso was one of the ones we did. I did a couple, but I don't think that was one of the them.

Q Okay. Now, which ones did you do?

A Would have been State -- State National. I don't remember what it was back then. It might have been a different name, but State National. And --

MR. ROBINSON: I need to confer with my client. Put it on the record if you'd like.

MS. SHEPPARD: Yes. Place on the record that Counsel is conferring with the witness as the witness is answering your question.

MR. ROBINSON: Are we off the record?

MS. SHEPPARD: No. No. We're not off the record.

(Whereupon, the witness and his attorney confer outside the hearing of the court reporter.)

MR. CASTILLO: While we're on the record, I'm just becoming aware of some information. And for purposes of clarification as to Mr. Webb's involvement -- and I'll direct my questions to you. Whether or not Mr. Webb was

coordinator of the HIDTA Unit at the time that any part of this -- the investigation that is the basis of this lawsuit was going on, you know.

MR. WEBB: I left the HIDTA Unit in March of 1990.

MR. CASTILLO: Okay.

MR. WEBB: So, to my knowledge, you know -- and I had no -- no knowledge of any of the details of -- I never heard of this case until --

MR. CASTILLO: You -- you have no personal knowledge as to anything that was going on?

MR. WEBB: No. None

MS. SHEPPARD: Okay. And we've -- we've used approximately five minutes here. So I want to make sure we tack this on to my time for questioning.

MR. ROBINSON: I have no objections to that.

MS. SHEPPARD: Okay. Thank you.

MR. ROBINSON: For the record -- for the record, I'd like to clarify why -- why I took a break and spoke to my client. I reminded him that he is prohibited from talking about anything to do with the grand jury. And I just wanted to make sure before he

testifies further that he's aware of that.

Q (By Ms. Sheppard) Now, you stated that you interviewed Chris Hines. Did you interview Chris Hines prior to this 6-2 interview -- '93 interview of Andrew Gantkessy?

MR. ROBINSON: If it's the

grand jury, you can't talk about it.

Q (By Ms. Sheppard) Did the interview --

THE WITNESS: Can I have a minute with him?

MS. SHEPPARD: Yes.

(Whereupon, the witness and his attorney confer outside the hearing of the court reporter.)

Q (By Ms. Sheppard) Okay. Now, the interview that you conducted with Chris Hines, was that under a grand jury subpoena?

MR. ROBINSON: Which interview are you referring to?

MS. SHEPPARD: The interview that Special Agent Acosta referred to.

MR. ROBINSON: You can answer that.

THE WITNESS: Yes, ma'am.

Q (By Ms. Sheppard) Now, what independent corroborating evidence did you

obtain after this interview with Mr. Hines to verify the information that he gave you?

MR. ROBINSON: I'm going to object to the extent that you may be inquiring about grand jury material. And if that's the case, then Agent Acosta cannot answer those questions.

Q (By Ms. Sheppard) Did you interview Joe Sudomir?

A No, ma'am.

Q Okay. Did you interview any other Ford employees pertaining to the Rasmark portion of the investigation?

A No, ma'am.

Q Okay.

A You mean besides Mr. Gantkessy?

Q Besides Chris Hines, Mr. Gantkessy.

A I don't recall Mr. Hines being a Ford employee. But, no, I didn't interview any Ford employees, other than Mr. Gantkessy.

Q Oh, okay.

Now, were the interview that was you conducted with Mr. Gantkessy, was that under a grand jury subpoena?

criminal activity?

A I don't recall what -- specifically what Mr. -- Mrs. -- Gail's -- what her allegations were, specifically. I just remember the name Joe Sudomir and Ford. But the specifics as to what they were, I don't recall right now.

Q Okay. Now, isn't it the FBI policy

to advise individuals their rights even though they are not the focus of the investigation --

MR. ROBINSON: Object --

Q (By Ms. Sheppard) When they are the focus of the investigation, even though they're not in custody, is what I wanted to say.

A I don't believe so, ma'am.

Q Okay. Now, back to this question: Andrew Gantkessy stated during the 6-2-93 interview, you or some agent played a tape recorder and asked him if he recognized the voices on the tape. Do you recall that occurring?

A No, ma'am.

Q Okay. Did you take notes during the interview of 6-2-93?

A No, ma'am. I don't recall taking any notes.

Q Okay. I'm sorry. Go ahead.

A Again, if I'm going to be doing the report, obviously I'm going to be taking notes. But I don't recall taking any notes. And if there were -- if I did take notes, they were very brief because, again, I wasn't in charge of that interview, so.

Q Well, weren't you required to make reports to your FBI supervisor?

A Yes, ma'am.

Q Didn't they require you to prepare reports?

A I would just -- yeah. I would just have taken very minimal notes. And I would have just reported whatever was on those

notes. Most of it, I just would have remembered.

Q Okay. And do you provide only verbal reports to your supervisor?

A No, ma'am. Not all the time.

Q All right. Did you prepare a 302 of the interview with Mr. Gantkessy?

A No, ma'am.

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Q Okay. Did you see any of the other agents take notes?

A I don't recall.

Q Okay. Did you see any of the agents recording the interview?

A Recording, no, ma'am.

Q Okay. Did you ask any questions of Mr. Gantkessy?

A I don't recall asking him any questions.

Q All right. Now, did Mr. Gantkessy make any type of admissions during this interview that might have constituted a violation of any kickback statute that is under the FBI jurisdiction?

A I'm not sure. I presented the results of that interview to -- to my supervisor. And he didn't feel there was enough there to -- to further investigation as far as kickbacks.

Q Okay. Now, during the 6-2-93 interview of Mr. Gantkessy, did you or any of the other agents attempt to persuade Mr. Gantkessy to cooperate in the Rasmark investigation?

A We asked him to assist us, if possible, if he was going to do so.

Q Okay. Now, were you aware prior to 6-2 interview that Mr. Gantkessy was a heart patient who had previously suffered a stroke?

A I don't think I became aware of that until after we -- we interviewed him, if I remember correctly. I don't think I was aware of it before my interview.

Q Were any type of background information obtained on Mr. Gantkessy prior to his 6-2 interview?

A Not by me, ma'am, no. Or -- I'm trying to think if anybody told me prior. There may have been, but I don't recall anybody telling me specifics about his background other than he was the manager of

the Ford warehouse out there.

Q Okay. Now during this 6-2-93 interview, did Mr. Gantkessy appear nervous or upset to you?

A A little nervous, yeah.

Q During this 6-2-93 interview, did Mr. Gantkessy ever ask to have his supervisor present?

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A I don't recall him asking, no, ma'am.

Q Okay. Now, during this 6-2 interview, did Mr. Gantkessy every ask to call his wife or his attorney?

A Definitely not his attorney. I don't recall anything about his wife.

Q Okay. During this 6-2 interview,

was Mr. Gantkessy ever told that if -- that he did not have to talk to you or the other agents if he didn't want to?

A I don't recall anybody saying that, no. I don't recall anybody telling him he didn't have to.

Q Okay.

A One -- one would assume, but I -- no, I don't remember him -- anybody specifically saying, you don't have to talk to us.

Q Okay. Was he required to talk to you and the other agents?

A No, ma'am.

Q Okay. Did you or any of the other agents ever threaten to release information about Mr. Gantkessy to his employer, Ford

Motor Company?

A No, ma'am.

Q Have you seen the -- the Customs report of that 6-2-93 interview with Mr. Gantkessy?

A I don't believe so, ma'am. I did my own little memo, so I didn't -- I don't think I ever saw the actual report that they generated.

Q Okay. Now, didn't you just say you didn't prepare a 302 on that report, an interview?

A That was a memo. Not a report. I stand corrected. It was a memo. It was not a 302, which is -- I'm assuming you're referring to a 302 as a report. It was a memo.

Q Okay. And it's your testimony that

you did not review the Customs report?

A No, ma'am. I don't recall reviewing it.

Q Why was the 6-2-93 interview terminated before it was completed?

MR. ROBINSON: I'll object to the form of the question. I don't think there has been any

testimony that it wasn't completed.

Q (By Ms. Sheppard) Well, why was it necessary to arrange a second interview with Mr. Gantkessy if you completed the interview on June 2nd, 1993?

A I believe there was some two or three points that differed from -- from my

previous interview with Mr. Hines and Mr. Gantkessy.

Q And why weren't these differences resolved at the 6-2 interview?

A I -- I don't think anybody noticed the difference until after the interview was done.

Q Okay. And what were those differences?

A May I confer?

Q Do you recall? Do you need Counsel to tell you what they were?

A No, ma'am. I need to talk to him about --

MR. ROBINSON: If -- if the reason he's hesitating is because the advisory came out of the grand

jury, he just can't talk about it.

Q (By Ms. Sheppard) Well, do you refer to this in your testimony? I mean, there's no --

MR. ROBINSON: He can't waive that. That -- he has no right. He can't. That's a criminal offense if he does. He can't.

MS. SHEPPARD: Are you threatening your client?

MR. ROBINSON: Ms. Sheppard, I'm just explaining why he can't -- he's not being an obstructionist. He just cannot answer.

Q (By Ms. Sheppard) Did you make a

note of the time -- the beginning of this interview, the 6-2 interview, when it began and when it end -- ended?

A No, ma'am.

Q Okay. Can you approximate how long the interview lasted?

MR. ROBINSON: Which interview are we talking about?

MS. SHEPPARD: Talking about the 6-2-93 interview.

Q (By Ms. Sheppard) Can you approximate how long that interview lasted?

A 30, 45 minutes, maybe.

Q Okay. How long did the interview on 6-3-93 last?

A 15, 20 minutes.

Q Okay. Now, did you call Andrew Gantkessy to ask him to come to the Customs office for this June 3rd, 1993 interview?

A I don't recall if it was either me or Fred Schroeder. I don't recall which one of us called him. I don't believe it was me, but I could be wrong.

Q Okay. But you and Fred Schroeder made the decision together to contact Mr. Gantkessy and have him come to the Customs office on June 3rd, 1993?

A Yes, ma'am.

Q Okay. And were any threats made to Mr. Gantkessy to persuade him to agree to that June 3rd, 1993 interview?

A No, ma'am. He was very cooperative.

Q Okay. Now, what -- well, you already stated -- let me ask you another question here.

On this -- at this June 3rd, 1993 interview, did you or Mr. Schroeder attempt to persuade Mr. Gantkessy to become an informant?

A No, ma'am.

Q Did -- was the subject ever discussed of getting Mr. Gantkessy to cooperate and -- and provide you with information pertaining to Rasmark or pertaining to Mark Rasmusson?

A We asked him if he wanted to provide information, but we didn't approach him as -- as a source. We asked him if he wanted to cooperate, if there's anything he can do to help us, we'd appreciate it. And he

said he would be willing to do, you know, whatever he could. That's --

Q Those are his exact words?

A Not exact words. That's more or less what he said. He didn't have a problem. He -- he didn't say, no, I don't want to help you out or anything, no ma'am.

Q Okay. Now, who was the lead

interviewer on the June 3rd, 1993 interview at -- at the Customs office?

A I don't recall who the lead -- I don't recall who it was.

Q Okay. Was the June 3rd interview recorded?

A No, ma'am.

Q Okay. Now, did you take notes of

the June 3rd interview?

MR. ROBINSON: Back up. Needs to clarify. Recorded as in audio recording or written recording?

Q (By Ms. Sheppard) Was the -- was the June 3rd interview recorded by tape, tape recording?

A No, ma'am.

Q Okay. Now, did you take any notes of the June 3rd, 1993 interview?

A I probably did, yes.

Q Okay. Did Agent Schroeder take notes?

A I don't recall.

Q All right. Now, did you prepare an FD 302 of the June 3rd interview?

A I don't recall.

Q Okay.

A I don't think there was. Thinking back, I don't think there was a 302 generated by me. I was -- I think it was just a follow-up memo.

Q Okay. Now, doesn't the FBI policy require that any interview information which might become testimony be reported on an FD 302?

MR. ROBINSON: I'm going to object to the form of the question. He's already -- it's been asked and answered. Depends on who the lead -- lead agency is who is conducting the interview.

Q (By Ms. Sheppard) Now, what --

let's see. Let me ask you, were any threats or promises made by either you or Mr. Schroeder on June 3rd to convince Mr. Gantkessy to cooperate?

A No, ma'am.

Q Did you or Mr. Schroeder ask Mr. Gantkessy to wear a wire to record conversations with Mark Rasmusson?

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A No, I don't recall that at all, no.

Q Okay. Did Agent Schroeder ask -- Schroeder ask -- ever ask Mr. Gantkessy to make a phone call to Mark Rasmusson from the Customs office so that Customs could record the telephone conversation?

A No, ma'am. I don't recall that.

Q Now, were you present during the

entire interview?

A Yes, ma'am.

Q Okay. Now, after -- after the interview with Mr. Gantkessy, did you ever hear Special Agent Frost or Special Agent Schroeder or any other officer -- well, not during the interview. Did you hear Special Agent Frost or Special Agent Schroeder or any -- or any other officer threaten to arrest Mr. Gantkessy if he refused to furnish information pertaining to Mark B. Rasmusson?

A No, ma'am.

Q Did you hear Special Agent Frost or Special Agent Schroeder threaten to furnish information to Ford if he refused to cooperate with Customs Services -- with the task force?

A No, ma'am.

Q Now, on June 2nd, you had -- the financial task force had, at least, five agents present. Why were only two agents necessary on June 3rd, 1993 to do an interview with Mr. Gantkessy?

A From what I recall correctly, there was only two or three points that needed to be cleared -- cleared up the next day.

Q Now, who made the decision to limit it to just -- to -- just to you and Special Agent Schroeder?

A It was probably Fred and myself and maybe Larry Frost might have had some input. But I think it was just Freddy and myself that decided it. We needed to clarify a couple of points.

MR. ROBINSON: And I

want -- for the record, I want to clarify. I think thinking back on the testimony, it wasn't a conscious decision on the numbers that showed up at the June 2nd interview. The officers just happened to be there in the area. I'm not sure one person directed

everyone to show up. It just happened. That's my recollection of the testimony.

Q (By Ms. Sheppard) Well, we can refer to the record and see what the testimony was.

Now, in -- Special Agent's Frost affidavit for the search warrant dated

November 19, 1993, Special Agent Frost stated that he received an FBI report written by you regarding information you received from a confidential source known as FBI 1. Were you the case agent assigned to FBI 1 in December of 1991?

MR. ROBINSON: I'm going to object to any questions regrading confidential informants.

Q (By Ms. Sheppard) Did you send a report to Special Agent Frost on -- dated June 3rd -- was it June 3rd? Let me make sure I got the date right. -- or June 7th. June 7th, 1993.

MR. ROBINSON: What report?

Q (By Ms. Sheppard) Did you -- did you send a report to Special Agent Frost dated

June 7, 1993?

MR. ROBINSON: Again, if it pertains to a report of a confidential informant, he can't answer that.

Q (By Ms. Sheppard) Did you interview any witnesses who had personal knowledge of Mark B. Rasmusson engaging in any criminal activity pertaining to money laundering or drug smuggling activities during 1991 -- during December 1991?

MR. ROBINSON: Pardon me? Is that -- Ms. Sheppard, is that including or excluding informants?

MS. SHEPPARD: I said witnesses. I didn't say informants.

record, the time frame is '91, if I understand your question correctly.

MS. SHEPPARD: I'm not asking the witness to reveal the informant's name.

MR. ROBINSON: Right. I'm not --

MS. SHEPPARD: I'm asking the witness to reveal the substance of the interviewer. That's -- that is not confidential information.

MR. ROBINSON: I beg your pardon? It is.

MS. SHEPPARD: It's in the affidavit. I mean, any privilege

of confidentiality has been waived once it's been placed in the affidavit. Affidavit is unsealed. Matter of record.

MR. ROBINSON: He -- whatever is in that affidavit, he can testify to. Anything outside of that, he cannot.

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MS. SHEPPARD: Okay. Well --

MR. ROBINSON: He hasn't waived any confidential --

MS. SHEPPARD: Well, let's go to what's in the affidavit.

MR. ROBINSON: That's fine.

MS. SHEPPARD: In Frost's affidavit, he states --

MR. ROBINSON: Do you want to show him a copy of that?

MS. SHEPPARD: I have received --

MR. BAKER: What page?

MR. ROBINSON: What page?

MS. SHEPPARD: It's on page 7 of the affidavit. It's paragraph 25 according to the numbering of the paragraph by the plaintiffs.

MR. BAKER: Page same for which? The residence or the --

MS. SHEPPARD: Leo Collins. And you can have a copy of that.

THE

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WITNESS: Which paragraph?

MS. SHEPPARD: Paragraph 25. Here is the other part.

Q (By Ms. Sheppard) Now, paragraph 25, it states, I have received a written report from Federal Bureau Investigation, the FBI Special Agent Joe Acosta. This report is dated June 7, 1993. Did you send special agent a report dated June 7, 1993?

A Yes, ma'am.

Q Okay. This report details an interview conducted with an individual who is referred to as a reliable, confidential informant. I've been told by Special Agent Acosta that the confidential informant that provided information contained in this report had close ties to and was criminally involved with the high ranking members of the Jesus Flores control substance trafficking organization during the years that Flores was

active. Did you interview this informant and did he give you this information at the time that it occurred?

MR. BAKER: At the time it occurred?

Q (By Ms. Sheppard) During -- did you interview -- did you interview this informant in June of 1993 or did you interview this informant in 1990 or prior to the Jesus Flores criminal trial?

MR. ROBINSON: I'm going -- I need to object to the form of the question. It's vague. I don't understand it.

Q (By Ms. Sheppard) Well, let me ask you this: How do you -- did you interview this informant or did someone give you the

information from the informant? Did you have a first-hand interview, a personal interview with the informant?

MR. ROBINSON: Anything that's outside what's in here written about the confidential informant, he can not testify to.

Q (By Ms. Sheppard) Did you take any steps to -- to obtain independent corroboration of any information that this informant provided you that you provided Special Agent Frost in this report dated June 7, 1993?

MR. ROBINSON: Again, Ms. Sheppard, it says, his reliable confidential informant. He cannot testify to anything else regarding

that informant, other than what's in this report.

MS. SHEPPARD: I'm asking him what he did as far as his investigative duties.

Q (By Ms. Sheppard) Did you do any follow-up investigation? Did you do any independent -- obtain any independent corroborating evidence of the information given to you by this informant?

MR. ROBINSON: What information are you referring to? What's written in the affidavit?

MS. SHEPPARD: The information that is contained in this affidavit.

Q (By Ms. Sheppard) Did you do any follow-up investigation?

MR. ROBINSON: Ms.

Sheppard, again, I'm going to have to object to form of the question

because it's vague. I don't understand what you're asking.

Q (By Ms. Sheppard) I'm asking Agent Acosta, did you do any type of follow up -- after you received this information from the informant -- when did you receive the information from the informant? Let me ask you that first.

MR. ROBINSON: I'm still going to object to the form of the question. You asked him to reveal confidential information.

MS. SHEPPARD: The date that he received the report?

MR. ROBINSON: That's

right.

Q (By Ms. Sheppard) Okay. Now, after you received the report, did you do any type of follow-up investigation to see if what he said was true?

A Can I have a moment with him?

(Whereupon, the witness and his attorney confer outside the hearing of the court reporter beginning at approximately 2:17

p.m. and ending at approximately 2:20 p.m.)

Q (By Ms. Sheppard) Special Agent Acosta, you understand that you are under oath and sworn to tell the truth and that any information you give that later is found to be inaccurate, that you're committing perjury?

A Yes, ma'am.

Q Okay.

MR. BAKER: I think that's a misstatement of the law. If he makes a mistake, he's committing perjury? I think it's a willful intentional falsehood is what perjury is in this state.

MS. SHEPPARD: Well, if you make -- let me rephrase it. If you make a willful misstatement or a false statement.

THE WITNESS: Yes. False statement.

Q (By Ms. Sheppard) You understand --

A Yes, ma'am.

Q Okay.

MR. ROBINSON: And as his attorney, he's aware of that. I have the right, if there's a question, a legal question about what he's going to testify to, I can confer with him. I don't tell him what to say. I just want to make sure he doesn't violate any -- in this particular case, any grand jury information. So that's why we're taking the breaks.

MS. SHEPPARD: Well, the witness is testifying and we're having almost constant interruption on -- on every question.

Counsel could have briefed him prior to the deposition about grand jury information.

MR. ROBINSON: That is my job. That's true.

Q (By Ms. Sheppard) Let's go back to this report of June 7, 1993. Did you do any follow-up investigation pertaining to any

information in this report relating to Mark B. Rasmusson or Rasmark?

A Myself on that information provided, no, ma'am.

Q Okay. And did you obtain this information --

A Sorry. Sorry. Go ahead.

Q Then, when you first obtained this information, did you go to your supervisor

with this information?

MR. ROBINSON: What information are we referring to?

Q (By Ms. Sheppard) Referring to the information about the informant saying that he has close ties to and was criminally involved with the high ranking members of the Jesus Flores controlled substance and trafficking organization during the years that Flores was active. Did you take this information to your supervisor?

A Okay. I need to clarify something. There is -- there is -- that information regarding Jesse Flores, that information was not obtained by me. That was obtained by another agent. Okay. What he did

to corroborate that, I don't know, ma'am.

Q Okay. Who was this other agent?

A It would have been Bill May. William May.

Q Okay. Did William May tell you when he obtained this information from this informant?

MR. ROBINSON: Anything to do with what was contained in the report and when it was obtained, what's in it, anything that's outside what's stated on page 7 in that paragraph -- I think you have marked 25 -- that involves information derived from a confidential informant, he cannot testify about that.

And I'll object to any question that you ask. And if he recognizes that information, he

cannot testify.

Q (By Ms. Sheppard) Let me ask you this question: Did William May participate in the investigation, the financial task force investigation, with you? Was he your partner

in the -- as far as the FBI was concerned on the financial task force investigation pertaining to Mark Rasmusson?

A No, ma'am.

Q Okay. Now, Special Agent Frost says in his affidavit, the FBI confidential source stated Jesus Flores and Arturo Bermudez were introduced to Mark Rasmusson by Pete Seaverns in 1988. Is this still part of the information that William May gave to you?

A Yes, ma'am. All that information regarding Jesse Flores would have been

obtained by Agent May.

Q Okay. And did you do any kind of follow-up investigation to obtain independent corroboration any of this information that you received from William May?

A No, ma'am. Mr. May -- Agent May assured me that the sources were very reliable, had been a long-term source with him and provided him very reliable and credible information. And I took his word for it.

Q Okay. And on the report -- Frost's affidavit states that on November the 3rd, 1993, I received a written report from the

FBI, Special Agent Joe Acosta. This report will provide information from an FBI confidential source. This source is referred

to in this report as FBI 1.

Did you send a report to Special Agent Frost dated November 3rd, 1993?

A Yes, ma'am.

Q Now, was that report prepared by you or was that prepared by another FBI agent?

A No. It was prepared by me.

Q Okay. And did you personally interview the person referred to as FBI 1?

A Yes, ma'am.

Q Did you do any type of follow-up investigation to obtain independent corroboration on any information that was given to you by FBI 1?

A On the information that's in this affidavit?

Q Yes.

A No, ma'am. This source had already proven to me to be credible and reliable prior

to providing this information.

Q Well, I'm talking about in regard to whether the contraband that he -- that the

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FBI and he or she says were in the house. Did you take any steps to bring charges, to -- to get a search warrant, to try and take some type of legal action?

A Too much time had passed. And any attempt to identify or corroborate this, would have tended to identify my source. Therefore, I didn't go any further.

Q Okay. So when did the incident occur that -- what -- what time frame? You said too much time passed. You state -- Frost states in his affidavit that the FBI stated that during December 1991 he or she was inside the Rasmusson residence.

Now, when did your interview with FBI 1 occur?

MR. ROBINSON: I'm going to object to the form of the question. Any information that would lead to the identity of a confidential informant, he cannot testify to.

Q (By Ms. Sheppard) Now, FBI -- according to Frost's affidavit, FBI 1 also reported that during February 1992, he or she

had seen three or four storage boxes underneath Deborah Rasmusson's bed and in Deborah Rasmusson's closet.

Now, did you do any type of follow-up investigation to obtain these records?

MR. ROBINSON: If it's grand jury, you can't.

THE WITNESS: I can't answer that. Grand jury.

Q (By Ms. Sheppard) Okay. When you say "grand jury", was the entire portion of the Rasmusson investigation a grand jury investigation?

MR. ROBINSON: Objection to the form of the question. That's privileged information. He cannot talk about that.

Q (By Ms. Sheppard) Did you do any type of independent corroboration of any activities on your portion of the investigation? Did you do any type of independent corroboration on any information that you obtained from -- from number one and from the Andrew Gantkessy interview? Did you

do any type of independent corroboration to verify any information that came out of that interview?

A Grand jury, ma'am.

Q Okay. Did you do any kind of -- did you obtain any type of information that led you to believe that Mark Rasmusson had committed a criminal offense pertaining to money laundering or drug smuggling?

MR. ROBINSON: Object to the form of the question. It's vague, overly broad and not specific enough for him to answer.

MS. SHEPPARD: Well, if I ask him specific, you object and say it's grand jury. Let's see if I can find one that --

MR. ROBINSON: That's an appropriate objection.

MS. SHEPPARD: -- let's see if I can find where it's not grand jury.

Q (By Ms. Sheppard) Did you -- prior to your -- beginning your portion of the financial force investigation, did your review

the DEA case file pertaining to the criminal trial that DEA brought against Mark Rasmusson in 1990?

MR. ROBINSON: I'm going to object to the form of the question. The first part, you said prior to him doing his part in the financial task force investigation. I didn't

understand the question.

Q (By Ms. Sheppard) Okay. Let me rephrase the question.

Were you aware of the fact that DEA brought a criminal case against Mark B. Rasmusson in 1990 and Mark B. Rasmusson was acquitted of those -- of the charge?

A Yes, ma'am.

Q Okay. Now, as a result of knowing that information, when you were assigned to the financial task force to work on the Rasmark portion of the case, did you go -- in turn, review the DEA case files to find out any information you could pertaining to Mark B. Rasmusson?

MR. ROBINSON: Object to

MR. ROBINSON: Fine. He just cannot testify about anything derived from a confidential informant.

THE WITNESS: Give me a moment. I'm trying to think back that far.

MR. ROBINSON: And for the

the form of the question. You haven't laid a foundation on when Agent Acosta became aware of that information regarding the Jesus Flores case.

Q (By Ms. Sheppard) When did you become aware of that information pertaining to Jesus Flores' organization in the criminal

trial?

A It would have been early part of '92, I guess. January to March. Sometime in that area. I don't know if it was the initial conference we had or if it was a short time thereafter or something.

Q Okay. Now, did you personally go and -- to DEA and review the case files pertaining to the Jesus Flores organization and Mark -- Mark B. Rasmusson?

A No, ma'am.

Q Did you personally interview any of the El Paso police officers who participated in the Jesus Flores investigation and Mark Rasmusson?

A No, ma'am.

Q Did you personally interview any of

the D -- DPS, Department of Public Safety, officers who participated in the Jesus Flores investigation and criminal trial pertaining to also or -- trial of Mark Rasmusson?

A No, ma'am.

Q Did you interview the IRS agents who participated in the criminal investigation of Jesus Flores and Mark Rasmusson in 1990?

A No, ma'am.

Q Okay. Did you check the FAA aircraft registry records pertaining to the -- of the Rasmark aircraft?

A No, ma'am.

Q Now, were -- did you request the FBI in Michigan to subpoena the records from Ford Motor Company pertaining to Rasmark?

MR. ROBINSON: If it's grand jury, you can't talk about it.

Q (By Ms. Sheppard) Well, I believe it's in your -- in your declaration. It's an administrative subpoena. It's certainly not grand jury. Let me give you a copy of that.

MS. SHEPPARD: And make this Exhibit Number -- Plaintiff's

Exhibit 18.

(Whereupon, Deposition Exhibit No. P-18 was marked for identification.)

MR. ROBINSON: Let me confer with my client one more

time.

MS. SHEPPARD: Okay. Well, as long as it's understood that Counsel is conferring with the witness again and leaving the conference room. Plaintiff reserves the right to add the time. I know we may have 15 minutes, 20 minutes by now.

(Whereupon, the witness and his attorney confer outside the hearing of the court reporter from approximately 2:33 p.m. to approximately 2:35 p.m.)

MR. ROBINSON: Again, for the record, just conferred with my client to make sure he doesn't

violate any grand jury material.

You can ask questions about that Exhibit P-18.

Q (By Ms. Sheppard) Okay. Now, regarding the FBI administrative subpoena, which was served on Ford Corporation headquarters on January 28th, 1993, what was the investigative purpose of obtaining Ford's shipping records for cargo shipped through Rasmark Jet Charter, Inc.?

A Basically, the purpose was to see what type of business -- what the volume of business that Rasmark was doing with Ford. And, basically, just to see what type of money was being generated through Ford.

Q Okay. Now, the administrative subpoena was served by FBI Agent Patrick

Bresnahan. Did you have any conversation or communication with -- with Mr. Bresnahan prior to 1-28-93?

MR. ROBINSON: I'll object to the form of question. You haven't laid a foundation whether he spoke to Agent Bresnahan or whatever his name is.

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THE WITNESS: Bruce -- I don't know what his name is.

Q (By Ms. Sheppard) Okay. Did you -- did you know the person who was going to serve the administrative subpoena?

A I don't believe I knew who he was until after it was served, if I remember correctly.

Q Okay. All right. Now, did you send a transmittal to the FBI office in Michigan to have this subpoena served?

A It was just a -- just -- just a request on paper that it be served. But it wasn't generated from our office. It was from the Detroit-office. They generated the subpoena. It was just a paper -- just a request from our office to their office that this be done.

Q Okay. Now, when did you receive the records from Ford Motor Company?

A Don't recall the date. Probably two months, three months later, if I remember correctly.

Q Okay. Now, did Special Agent Frost request that the FBI subpoena those records

from Ford Motor Company?

A I don't think he requested it. It was just something I asked him or I told him we could do. And he says fine.

Q What particular charge were you investigating at the time -- let me ask it this way: Was there a particular charge under the FBI investigative authority that you were looking into at the time when you requested those records from Ford?

MR. ROBINSON: For the record, there has been lots of testimony that this was a money laundering financial task force.

MS. SHEPPARD: Well, I'd like to hear it from the witness.

Q (By Ms. Sheppard) What -- what was

the FBI's position on this?

A It would have been relating to money laundering.

Q Okay. Now, was anyone -- or are you aware -- or were you aware at that time that anyone -- that someone from the Customs office in El Paso was sent to present the subpoena to Ford or to be present when the

subpoena was served?

A The subpoena. The administrative subpoena?

Q Yes.

A From -- somebody from Customs?

Q Yes. From the El Paso office.

A No, ma'am. It's my understanding FBI Agent Patrick Bresnahan, he's the one that

did serve the subpoena by himself. I'm not aware of any Customs personnel being present when it was served.

Q Okay. Are you aware of any Customs personnel participating in helping Ford to understand the subpoena and gathering up documents and so forth?

MR. ROBINSON: I'm going to object to the form of the question as vague and --

Q (By Ms. Sheppard) Are you aware -- oh, I'm sorry.

MR. ROBINSON: I'm sorry.

Q (By Ms. Sheppard) Are you aware of any Customs personnel assisting Ford in complying with the subpoena?

A With this subpoena?

Q Yes.

A No, ma'am.

Q Now, did you personally receive those records from Ford Motor Company?

A Yes, ma'am.

Q Did you review those records?

A Briefly. Not -- not -- I wasn't really familiar with the invoicing part of it, so I think I made copies and I provided a copy to Customs who were more familiar with that type of billing and so on.

Q Okay. Now, did you have those records analyzed by an FBI lab that deals with analysis of documents to -- to determine whether anything in those documents pertain to drug smuggling or money laundering activities?

A No, ma'am.

Q Did you have to review those records to do an analysis to see whether it pertained to -- anything in those records pertained to tax evasion?

MR. ROBINSON: Object to the form of the question. Did he have who?

Q (By Ms. Sheppard) Did you have the

FBI lab or the appropriate FBI lab that does document analysis to check those records to see if anything in those records pertained to tax evasion?

MR. ROBINSON: Object to the form of the question. It's been asked and answered. I believe his testimony is that he

copied those records, gave those records to the Customs Service and they did any analysis, if any.

Correct me if that misstated your testimony.

THE WITNESS: That's correct.

Q (By Ms. Sheppard) Okay. Let me make sure because I hadn't asked that question. Did you -- did the FBI perform any kind of analysis on these documents to -- for FBI purposes?

A No, ma'am. Other than a quick review by me, that was it. No other personnel.

Q Okay.

A I just looked at them and just

tried to get an idea what kind of volume, what kind of money was being generated. And then I made a copy and provided Customs with it.

Q Okay. Now, what was your reason, again, for sending that subpoena to get those records?

A Again, I was trying to get a figure -- or a feel for how much volume, how much business was being generated through Rasmark.

Q But at the time that you subpoenaed those records, you didn't have the expertise to make that determination. Is that what you're testifying to?

A What I said was Customs -- Customs is more familiar with invoicing and so on because it relates to air -- you know,

airplanes and that type of stuff and cargo and so on. That's why I gave it to them.

Plus, they were doing most of the analysis on the documents anyway, so.

Q Why didn't Customs subpoena the records?

A You would have to ask them, ma'am. I just offered to and they said sure.

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Q Okay. Okay. Now, can you explain how the money paid by Ford Motor Company to Rasmark was related to money laundering?

A Again, I'll restate it. I wanted to see what volume of business was being generated by Rasmark through Ford.

Q Okay. Now, how was that related to money laundering?

A Well, if I know how much money is actually legitimately being generated by Rasmark, then I can try to corroborate -- corroborate through other -- other means to see if there is a big difference in numbers.

Q Okay. And did you cooperate -- corroborate whether there was a big difference between the numbers?

A No. Not on the invoices, no ma'am.

Q Did you ever see those records again after you gave them to U. S. Customs office?

A No, ma'am.

Q Did anyone from IRS ever analyze those records that you obtained from Ford before you gave them to Customs service?

A Not that I recall, ma'am.

Q Now, from your participation on the financial task force, are you aware whether IRS did any analysis of those records?

A Not that I'm aware of, ma'am.

Q Okay. Now, during the time that you served on the financial -- you were assigned to the financial task force, did you ever meet with any of the officials from Ford Motor Company?

A No, ma'am.

Q Okay. Are you aware of any other member of the financial task force meeting with officials from Ford Motor Company?

A I don't know if there was actual meeting person to person. I think there was some telephone calls being made between Larry Frost and some people at Ford, but I don't

think it was relating to my stuff.

Q Okay. Can you recall an approximate time frame when these conversations might have occurred?

A I think it was during latter part of '93, early part of '94, maybe. I think it was latter part of '93, if I remember correct.

Q Now, during the portion of the

Rasmark investigation that you conducted, that you carried out, did you uncover any factual evidence that led you to believe that Mark Rasmusson was participating in money laundering or drug smuggling activities?

MR. ROBINSON: I'm going to object to the form of the question. You said factual

evidence. It's a misleading, compound question. If you ask any facts, that's an appropriate question.

Q (By Ms. Sheppard) Okay. Did you uncover any facts that led you to believe that Mark Rasmusson was participating in drug smuggling or money laundering activities?

A No, ma'am.

Q Did you uncover any facts that Deborah Rasmusson was participating in money laundering or drug smuggling activities?

A No, ma'am.

Q Did you uncover any facts that Mark Rasmusson was participating in tax evasion offenses?

A Well, I'm not an expert in that area; but not that I'm aware of, no, ma'am.

Q Did you uncover any facts that you referred to IRS?

A No, ma'am.

Q Did you uncover any facts indicating that Mark Rasmusson was engaging in mail fraud?

A No, ma'am.

Q Did you uncover any facts that led you to believe that Mark Rasmusson was engaging in violations of the Bank Secrecy Act?

A No, ma'am.

Q Did you uncover any facts to -- to show that Deborah Rasmusson engaged in any tax evasion or facts that you felt that you needed

to refer to IRS?

A No, ma'am.

Q Did you uncover any facts that Andrew Gantkessy engaged in tax evasion?

A No, ma'am.

Q Did you uncover any facts that indicated or led you to believe that Deborah Rasmusson are engaged in violations of the

Bank Secrecy Act?

A No, ma'am.

Q Did you uncover any facts that led you to believe that Andrew Gantkessy engaged in violations of the Bank Secrecy Act?

A No, ma'am.

Q Did you uncover any facts that led you to believe that Andrew Gantkessy was

engaged in drug smuggling or money laundering activities?

A No, ma'am.

Q Did you uncover any facts that led you to believe that Andrew Gantkessy were engaged in kickback schemes with Mark B. Rasmusson or Deborah Rasmusson?

MR. ROBINSON: Other than Andrew Gantkessy's testimony during his interview?

MS. SHEPPARD: Well, let the witness testify.

THE WITNESS: Okay. As far as kickbacks, obviously, the United States Attorney had to make the call on that, Assistant United States Attorney. I don't recall

you do a follow-up investigation with Ford Motor Company to find out exactly how they -- how do they approve charters?

A No, ma'am. I believe Customs may have; but I never did, no, ma'am.

Q Okay. And did you refer this information -- these facts you just related to U. S. Attorney's office for prosecution -- for a prosecutive opinion?

A Yes, ma'am.

Q And -- and you referred that information without getting any kind of independent corroborating evidence of the information that you -- that you just related, the facts that you just related?

MR. ROBINSON: I'm going to object to the form of the

question. I think you're trying to mislead the witness. When someone admits to doing something illegal, I'm not sure the law requires corroborating evidence.

Q (By Ms. Sheppard) Exactly what did Mr. Gantkessy say? What did he say that was illegal?

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A Well, that was -- that was the whole issue with the United States attorneys was: Did he actually have the authority to determine who got the -- the charters from Rasmark. And I could never get him to give me a yes or no. He was very vague -- well, I do but I don't. And, so, without him actually saying I do and, yes, I can determine who gets

a charter and, yes, I get money for it in return, short of that, I couldn't do anything with it.

Q So, you were going to make the whole case off of Mr. Gantkessy's word. Do you -- is that the way the case was going to be made?

A No, ma'am. I simply did the interview and I presented it to the United States Attorney. Here is -- I interviewed this individual. Here is what he told me. Here is the other information that I have.

And he said, well, I'm sorry, I don't think there is enough there to prosecute.

I said, well, that's fine. I just needed to present the facts as I've found them

so far and if you haven't -- if you don't want to continue, that's fine.

Q Okay. Well, did you -- did the U. S. attorney's office suggest to you to go interview some Ford employees and find out exactly how the process works?

MR. ROBINSON: Object to the form of the question. It's irrelevant to the issues of qualified immunity in this case.

Q (By Ms. Sheppard) Did you do any kind of independent corroboration of the information that you got from Mr. Gantkessy?

A Grand jury, ma'am.

Q Okay. Let me ask you this question: Did you or the financial task force call Ford to get permission to interview Mr.

Gantkessy on June 2nd, 1993?

A I didn't, ma'am, no.

Q Okay. And do you -- are you -- do you know whether any member of the task force called Ford to get permission to interview Mr. Gantkessy on June 2nd, 1993?

MR. ROBINSON: I'm going to object to the form of the

question. I think you're trying to mislead Agent Acosta. Are you asking him to assume that permission is required?

Q (By Ms. Sheppard) Are you aware of any -- Special Agent Frost or any other member of the task force calling Ford Motor Company

to -- to get permission or to notify them that they are going to interview one of their employees?

A I don't recall who -- who called Ford or if anybody called Ford to set up the interview. All I know is Mr. Gantkessy agreed to be interviewed. I don't know who -- who even made the call. So I don't know if anybody in the task force made a call to Ford. When I say "Ford", I mean Ford back in Detroit.

Q Okay. Now, you stated that Mr. Gantkessy agreed to cooperate with the financial task force. What did he agree to do for the financial task force?

A My -- what I recall was if he heard of anything that was illegal or anything like that, he would let us know. When I said

cooperate, that's my understanding, if you hear anything, if they do anything illegal or anything like that, just let us know.

Q Okay. Okay. Do you recall an occasion in -- probably in late 1993, in December 1993, where you called Deborah Rasmusson to follow up on some information obtained from the November 22nd, 1993 seizure of records from Rasmark? Do you recall calling up Deborah Rasmusson and requesting that she come in to talk to you?

A No, ma'am.

Q Okay. Do you recall Deborah Rasmusson -- interviewing Deborah Rasmusson regarding possible wire tapping by her husband, Mark Rasmusson?

A I didn't interview Deborah. I

interviewed her daughter.

Q Okay.

A She was present during the interview and so was her attorney. Deborah and her daughter's attorney was present during the interview; but I didn't actually interview Deborah, per se. She was just there.

Q You didn't ask Deborah Rasmusson

any questions?

A No. I think the purpose of the interview was to see what her daughter knew about the alleged wire tap.

Q And what did she know about this alleged wire tapping?

A She was able to identify her voice and another voice, another juvenile's voice

that was on the tape. That's basically it.

Q Okay. Now, were any charges brought pertaining to wire tapping against Mr. Rasmusson or anyone else that you thought was involved?

A No, ma'am.

Q Why not?

A United States attorney advised me that due to the fact that it was -- it was going through a messy divorce, he didn't think it was prosecuting merit.

Q Okay. And how was this wire tapping done?

A What I was told by a witness was that there was a recorder at Mark's house that would actually automatically start recording whenever a phone call was received at

Deborah's house.

Q Okay. The recorder was located at Mark's house, Mark Rasmusson's house. Which house are we speaking of? What was the location of that house?

A Something Douglas.

Q Dale Douglas?

A Dale Douglas, right.

Q Okay. And Mr. Rasmusson and Mrs. Rasmusson were still married. Isn't that correct?

A I think they were separated. I don't think they were divorced yet.

Q Okay.

A They were living apart.

Q Okay. And it was your belief that you -- you had a wire tapping case based on

Mr. Rasmusson recording telephone calls from his house on Leo Collins?

A Based on what the people I interviewed told me, I presented it to the U. S. AG and he just didn't feel comfortable due to the fact they were going through a divorce. And he wasn't sure, also, because -- I guess technically he was still a subscriber

on that phone that Deborah had at her residence. So there was that issue, so he said it just -- it wasn't something he wanted to proceed with.

Q Okay. And at that time that you took this information to the U. S. Attorney's office, was Mark B. Rasmusson still listed has the owner of the home on Leo Collins?

A I believe so, ma'am.

Q Okay. Is there any law saying you cannot record your own telephone conversations?

A Not that I'm aware of, ma'am.

THE VIDEOGRAPHER: I have approximately 15 minutes on this tape.

MS. SHEPPARD: Is that time counted from the original time?

THE VIDEOGRAPHER: That's just on the tape.

MS. SHEPPARD: Oh, on the tape. Okay, then, because --

MR. ROBINSON: You've got about 25 minutes.

MS. SHEPPARD: Yeah. Okay.

When you said 25 minutes, you're counting from what -- from what point? An additional 25 minutes?

MR. BAKER: Well, we were scheduled to go until 10 after and so we're figuring another 15 minutes past that.

MR. ROBINSON: So 3:20.

MS. SHEPPARD: Probably like 20 minutes past that. I mean, y'all took quite a few conferences. I think it's more like 20 minutes.

MR. ROBINSON: Well, let's -- let's agree on a quitting time now.

MS. SHEPPARD: Well, are you going to have any more conferences?

MR. ROBINSON: It depends -- it depends on your questions.

MS. SHEPPARD: Okay. Well, let's not -- let's not make a decision on that. We know we've

got at least 20 minutes coming after 3:10. Then we'll see where we are -- I may be through before then.

MR. ROBINSON: Well, assuming that there are no more conferences, let's set a time now for the -- your two hours. Is

3:20 fair enough?

MS. SHEPPARD: Well, no. Let's see. We counted from -- 3:10 would be the normal time when it ends. And, then, 20 minutes from that would make it around 3 -- 3:35.

MR. ROBINSON: Okay. We'll stop at 3:35.

MR. CASTILLO: 3:30.

MR. BAKER: 3:3O.

MR. ROBINSON: 3:30.

MR. BAKER: Plus 10 is 30.

MS. SHEPPARD: Oh, well, like I say, it was quite -- it was quite a few -- quite a few conferences and so -- you know.

MR. BAKER: I think 3:30 is fair.

MS. SHEPPARD: Well, I think -- well, we'll see. We'll see how it goes. I may get through before then -- barring any more conferences, we can get through this.

Q (By Ms. Sheppard) Okay. Let me ask you this question: Are you aware of a letter sent to Ford Motor Company by Special Agent Frost -- or was signed by special agent in charge, Michael Lappe but it was drafted by Special Agent Frost? Are you aware of that letter, July 26, 1993?

A No, ma'am.

Q Okay. So you've never seen the

letter or heard of the letter and didn't participate in drafting the letter?

A No, ma'am.

Q Okay. Special Agent Frost did not discuss the letter with you?

A I don't recall him saying anything about a letter to Ford.

Q Okay. All right. Thank you.

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Did you participate in any of the activities pertaining to surveillance of the aircraft or approaching the aircraft of Rasmark on any occasions --

MR. ROBINSON: I'm going to object --

Q (By Ms. Sheppard) -- during the

Rasmark investigation?

MR. ROBINSON: Object to the form of the question. It's compound. You mentioned surveillances or approaching the aircraft.

Q (By Ms. Sheppard) Well, let's take one at a time.

Did you participate in any portion of the investigation where you physically went to Rasmark aircraft with other agents?

A Yes, ma'am.

Q Okay. Can you give me the time frame on when that occasion occurred?

A Where is my affidavit? I put it in my affidavit. June 1st of '93.

Q Okay. Now, what was the purpose of that occasion of approaching the Rasmark

aircraft?

A Again, this was an action initiated by Customs. I was a task force member and they asked for my assistance. The specification as to why it was stopped, I don't recall the specifics, ma'am.

Q Okay. Do you recall what your duties were? What were you assigned to do on that particular occasion?

A I was merely to stay on the top of it and just make sure everything was okay.

Q I mean, what were you expecting to happen?

A Nothing. I was just there to assist in whatever they needed me to do.

Q Okay. Were -- was there any discussion by the task force to -- to search

the aircraft?

A I don't recall anybody saying about a search.

Q Okay. Did you participate in any interviews of a pilot on that particular occasion?

A No, ma'am. I didn't -- I talked to the pilot but that was later that afternoon

and it was in an interview.

Q Okay. Who did you talk to?

A I can't remember his name. The pilot. I think that probably that Mr. Frost and Mr. Schroeder talked to that -- that morning.

Q Okay. What did you say to this pilot?

A All he wanted to know is: Should I continue working for Rasmark? I said, "That's your call. I'm not here -- I can't tell you who to work for." I guess he was just concerned. And I told him --

Q Did he -- did he say why he was concerned about working for Rasmark?

A No. I guess just stopped that morning, I guess, scared him. I'm not sure. That's all he wanted to know is: Should I continue? I said, "That's your call. I can't tell you who to work for."

Q Okay. What did Special Agent Frost tell this pilot that morning when he stopped the pilot at Rasmark?

A It was pretty loud. I just remember he asked him to cut off the engines.

And they started talking. I wasn't close enough to hear what they were saying.

Q Okay. Did Special Agent Frost tell you what he said?

MR. ROBINSON: Object to the form of the question. Who is "he"? Agent Frost or the pilot? It's a vague question.

Q (By Ms. Sheppard) Did Special Agent Frost tell what the pilot said -- what he said to the pilot, what Special Agent Frost said to the pilot?

A No. All I remember about the conversation was he was just taxiing the plane. And I don't even know if we knew where he was headed or if he was headed anywhere. I think he was just taxiing the plane for

maintenance purposes or something. I'm not real sure. But he didn't tell me verbatim, this is what he said, no.

Q Okay. And at the time that you saw this aircraft taxiing, was it -- did you observe any criminal violations? Did the -- were the aircraft -- was the pilot doing something with the aircraft that he didn't

supposed to do -- that he didn't supposed to do?

A I'm not a Customs agent. But as far as him doing anything, I didn't see anything.

Q Okay. Now, were there any other occasions like the June 1st occasion where you and other agents approached a Rasmark

aircraft?

A Not me. That was the only time I approached one.

Q Okay. Did you ever participate in any search of a Rasmark aircraft?

A No, ma'am.

Q Did you ever meet with any agents, special agents from Corona, California, pertaining to the Rasmark case?

A No, ma'am.

Q Have you heard the name, during any of the financial task force briefings, Pamela Harrington? Special Agent Pamela -- Pamela Harrington? Have you heard that name?

A I don't recall that name, no.

Q Okay. Did you do any type of investigation pertaining to a company known as

Next Flight, Inc.?

A All I know about Next Flight is it was a company that Deborah and David Chavez, they were the owners of it. It ran out of -- from what I understand, it was run out of the same place that Rasmark was. But as far as investigation, no.

Q Okay. Did the financial task force during any -- any of its briefings, tell you that they obtained information about Next Flight indicating that it was involved in some type of criminal activity relating to drug smuggling or money laundering?

A No, ma'am. Not that I recall, no.

THE VIDEOGRAPHER: Could I take this opportunity to switch

tapes?

MS. SHEPPARD: Yes.

THE VIDEOGRAPHER: This is the end -- this is the end of tape one. We're off the record at 3:07 p.m.

(Short Recess.)

THE VIDEOGRAPHER: This is tape two in the continuation of the deposition of Joe Acosta. We're on the record at 3:10 p.m.

Q (By Ms. Sheppard) Okay. We're back on the record.

Let me go back to this

administrative subpoena that was served by FBI. Since that subpoena was served on Ford and since it was the FBI administrative subpoena, did you feel that it was necessary for anyone involved in the Rasmark investigation to meet with Ford official -- officials and explain the detail of the investigation?

MR. ROBINSON: I'm going to have to object to the form of the question to the extent that may be asking him to reveal investigative technique.

Q (By Ms. Sheppard) Did you feel it was necessary that any task force members assist Ford in complying with this administrative subpoena?

A With the administrative subpoena?
Q Yes.
A No, ma'am.
Q Did Ford ever contact FBI and request a clarification of the documents that were requested in that subpoena?
MR. ROBINSON: Object to the form of the question. It's overly broad. Agent Acosta may not have information about whether anyone with the FBI. You can ask him whether he was ever contacted or if he knows if anyone was contacted, that -- he can answer that question.
Q (By Ms. Sheppard) Okay. Let's -- let's go with that question.
Did anyone from Ford Motor Company contact you and request for clarification of

the documents that -- that were requested in the administrative subpoena?

A No, ma'am.

Q Are you aware of Ford Motor Company contacting any other FBI agent for a clarification?

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A Not that I'm aware of, ma'am.

Q Okay. Are you aware of Ford Motor Company contacting any member of the financial task force for clarification of the FBI subpoena?

A No, ma'am.

Q Now, did you participate in the execution of the search warrant on November 22nd, 1993?

A Yes, ma'am.

Q What were your duties on November 22nd, 1993?

A Okay. My primary duty was to video record the condition of the house before the search -- when it was conducted. The search was conducted and then after the search was conducted.

Q Okay. Now, have you had any special training in taking video pictures of a search, execution of a search warrant?

A No, ma'am. Obviously not. If you reviewed the video, obviously not.

Q Well, thank you.

A You thought you were seeing things.

MS. SHEPPARD: No further

questions on that. Thank you very

much.

Q (By Ms. Sheppard) Let me ask you this question: At any time you were participating on the Rasmark portion of this, quote, larger investigation, did you ever go to your FBI supervisor and complain that you didn't want to be on that case any more?

A No, ma'am. Complain, no.

Q Did you ever go to your supervisor and say that you didn't see any reason to continue the investigation on the Rasmark portion of that larger investigation?

A No. I think I pretty much was certain all the way until it was decertified that -- to continue looking. But I didn't complain that, no, I want out or anything like that.

Q Exactly what were you looking for?

A Same violations I said earlier.

Money laundering, bank places.

Q Now, did the FBI support decertifying the Rasmark portion of the case?

MR. ROBINSON: Object to the form of the question. Totally

irrelevant to the issues of qualified immunity in this case.

MS. SHEPPARD: No. It goes to the issue of whether there was anything to investigate at all. That's very relevant to qualified immunity.

MR. ROBINSON: You asked whether -- the FBI's position.

MS. SHEPPARD: Well --

MR. ROBINSON: Restate the

question.

Q (By Ms. Sheppard) Let me restate the question. Did you, Joe Acosta, recommend decertification of the Rasmark portion of the case?

A Yeah. I agreed with it.

Q Okay. At any time --

MR. ROBINSON: Just for clarification, the question was recommend, not concur.

THE WITNESS: Oh, no. I concurred. Obviously, I can't recommend much. I'm just an agent.

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Q (By Ms. Sheppard) Well, did you concur in the decertification of the Rasmark

portion of the case?

A Yes, ma'am.

Q Okay. At any time during the time that you were participating on the financial task force pertaining to the Rasmark portion of the investigation, did you ever go to any of the Customs supervisors and express any concerns about continuing the Rasmark portion of the investigation?

A No, ma'am.

Q Okay. Did -- regarding that administrative subpoena, did you receive all the records that you requested from Ford?

A From the subpoena, yes, ma'am. Mr. -- yes, ma'am.

Q And did you ever discuss decertifying the Rasmark portion of the investigation with your supervisor, with your FBI supervisor?

A No, ma'am. Again, we were not the lead agency. We were there until -- until they needed us. If that was one year, two years, three years, then they had the call.

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Q So let me ask you this question: In your opinion -- this is your personal opinion -- if you see a case not uncovering any evidence, would you continue to investigate?

MR. ROBINSON: Object to the form of the question. Are you referring to this case as any evidence or are you giving him a hypothetical?

Q (By Ms. Sheppard) Well, let's say

you continue with this case. Since you were not uncovering any information that the U. S. Attorney's office felt it could bring any type of indictment against Mark B. Rasmusson, why did you believe you needed to continue the investigation?

MR. ROBINSON: I'm going to object to the form of the question to the extent it's misleading. The prosecutorial discretion of the U. S. Attorney's office has nothing to do with whether evidence -- evidence of criminal activity actually occurs and is

contribute. I wasn't there when the box was obtained.

Q Okay. Did you go with Agent Frost to the magistrate to present that affidavit?

A No, ma'am.

Q Did you review the contents of the box after the box was opened?

A Yes, ma'am.

Q And did you -- did you refer any facts or information to U. S. Attorney for further -- for any type of charges as a result of your review of documents in that box?

A No, ma'am.

Q Did you see anything in that box, other than normal business records?

As far as I could tell, you know. But, again, I'm not familiar with the air charter service. Based on what I know, no, ma'am, there was nothing that I saw in there.

Q When you say nothing you saw in there, you saw --

A Just normal business records.

Q Do you know who took the photograph of the Rasmusson residence on the occasion of the execution of the search warrant?

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF TEXAS

EL PASO DIVISION

MARK B. RASMUSSON,	*	
ET AL	*	
	*	
VS.	*	CIVIL ACTION:
	*	EP-95-CA-475-F
LAWRENCE E. FROST,	*	
ET AL	*	

VIDEOTAPED DEPOSITION OF

DONALD REAY

January 24th, 1997

the investigative activity within the office of the special agent in charge in El Paso. And it was a direct responsibility for the investigative activity of the El Paso office itself as opposed to the five outlying offices that also fall under the special agent in charge, El Paso.

Q Okay. And you said there is five outlying offices?

A Yes, ma'am. They're referred to as RAC offices, Resident Agent in Charge offices.

Q I see. And where are they located?

A They're located in Presidio, Texas; Alpine, Texas; Las Cruces, New Mexico; Deming, Mexico; and Albuquerque, New Mexico.

Q Okay. Now, was there a meeting held pertaining to the Rasmark portion of the

investigation in Alpine, Texas?

A I don't recall one.

Q Okay. Now, your declaration also operations from July 1992 until June 1993 and, again, from January 1994 until June 1996.

What were your specific duties and responsibilities as ASAC for field operations?

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A I was responsible for -- as a second line supervisor for each of the Resident Agent in Charge offices that I just mentioned. In addition, I served as the Customs representative as the vice chairman of the executive committee of the High Intensity Drug Trafficking Area partnership in New Mexico. In addition to that, I served as the Customs representative and the chairman of the

working group of the HIDTA partnership in West Texas. In addition to that, I was responsible for two different organized crime drug enforcements task force areas because New Mexico answered to one core city and West Texas answered to another core city.

Q Okay. Now, in your duties as ASAC, were you responsible for supervising the currency group supervisor or who -- let me -- let's -- let me back up and ask this question: My understanding it was a financial group. Is that the same as the currency group?

A Yes. The -- the terminology changed and time and group structure within an individual office changed. One of the special agents in charge was known for his

changeability in personnel and group names. So those names could be used interchangeably.

Q Okay. So, now, when we refer to the financial task force, we're speaking of task force under the supervision of the -- either the financial group or the currency group, whichever name was being used at the time?

A Yes, ma'am.

Q Okay. So we can use the currency group and financial group interchangeably?

A Yes.

Q Okay. Now, is the -- well, let me ask you this: What -- what was the duties of the currency group?

A Well, the currency group had a multifaceted approach. They dealt with

financial investigations that were purely Customs in orientation. Those that were joint investigations with other entities fell under the financial task force.

And the financial task force was also supervised by that currency or financial group supervisor.

Q Okay. Now, who was the currency

financial supervisor?

A At what time, ma'am?

Q At the time that you became part of the El Paso office.

A At the time I came to El Paso, I believe that was Robert Fisher.

Q Okay. And who succeeded Robert Fisher?

A I'm not positive who -- who was

right after Mr. Fisher.

Q Okay. During the period of time that the financial task force were investigating the Rasmark part of the larger investigation, who was the supervisor of the currency group at that time?

A During the early part of that investigation, it was group supervisor Michael Wilczewski.

Q Okay. And so you were supervising Mike Wilczewski, then; is that correct?

A Yes, ma'am.

Q Okay. And then what period of time did you supervise Mr. Wilczewski?

A Well, I supervised Mr. Wilczewski I from July of 1990 to July of 1992 and, then,

again from June 1993 until January 1994 when I

was his first line supervisor during those periods of time.

Q Okay. And what were you doing in between those periods of time?

A I was supervising the Resident Agent in Charge offices as the ASAC force field operations.

Q I see. Okay. And the currency group was not under that section --

A No, ma'am.

Q -- under fields -- field operations?

A No, ma'am. Each of those offices, if they had a currency -- a lot of those offices are one-group offices. So they did not have a currency group, per se. They would rely on the El Paso currency group for resource and expertise if they needed it.

Q I see.

A But I did not supervise that local El Paso group.

Q Okay. Now, what's the difference between a task force and an operation? For example, in your declaration, you stated some

information regarding Operation Transwestern. What's the difference between a task force investigation and operation?

MR. ROBINSON: I'm going to object to the form of the question to the extent it may require him to reveal investigative techniques or procedures.

Q (By Ms. Sheppard) Without revealing any specific investigative

technique, can you give me a general idea what's the difference between a task force and an operation? Is the task force incorporated under an operation or is an operation incorporated under the task force?

A There could be several operations under one task force. An operation is a specialized approach and it could be done in a number of different ways. One of those being an undercover. Another would be to target a particular area, another would be to work on a -- where there cases of special funding where they might work a certain area for a period of time. That could be an operation.

Q Okay.

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A A task force and an operation could

be one agency or it could be multi agency. A task force, on the other hand, is always multi agency to take the advantage of the force multiplier effect and multi agency talents.

Q Oh, okay. Thank you.

Now, since you were the supervisor of Mike Wilczewski who, during the time of financial task force investigations pertaining to Rasmark, then that meant you were also the -- you had oversight over the financial task force yourself?

A For part of the time, I was in ASAC, yes, ma'am.

Q Okay. When was the financial task force formed?

A It was funded -- formed with a -- with the HIDTA money, when the partnerships went in. And I -- my best recollection is it should be finishing their third year of

operation, I believe. So that would have been mid '94, I guess.

And it was called a task force when groups were working together prior to that, but I was relating it to the HIDTA -- HIDTA

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funding. And I guess it started a little before that, as I think about it. I really can't tell you an exact date it started.

Q Okay. When was Mark Rasmusson and Rasmark first targeted U. S. Customs for investigation?

MR. ROBINSON: I'm going to object to the form of the question. It's irrelevant to the issues of qualified immunity.

Additionally, to the extent

it reveals investigative techniques or procedures, Mr. Reay cannot answer that question.

Q (By Ms. Sheppard) Let me ask you this question: Did you assign Special Agent John Peterson to investigate Rasmark?

A No, ma'am.

Q Did you assign John Peterson to investigate Mark B. Rasmusson or Deborah Rasmusson?

A No, ma'am.

Q Were you aware at the time that you took over the ASAC for the financial task force that John Peterson had conducted a

A I remember talking about them participating in the task force. I had

forgotten that they had actually assigned somebody. If Senior Special Agent Frost says that they did, then I'm sure they were there because he knew the players that were there everyday.

Q Okay.

A I wasn't at that site everyday.

Q Okay. What percentage of your time did you spend with the financial task force as it relates to the Rasmark of the investigation?

A A very small percentage of my time. My -- my duties were very vast.

Q Okay. Now, were you working in the Customs office on May 23rd, 1992?

A Yes, ma'am.

Q Was that your regular duty hours or -- on May 23rd, 1992?

A No, ma'am.

Q Do you recall what time you arrived at the Customs office?

A It was in the evening hours. I don't recall an exact time.

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Q Were you called by Special Agent Frost to come to the Customs office on that particular date on May 23rd, 1992?

A I think it was Special Agent Frost who advised me that -- that there was going to be some events that might be of benefit to the service, yes.

Q Okay. Did he tell you what kind of benefits that Customs Service could anticipate?

A As I recall, he had received a telephone call and he had been advised that

Deborah Rasmusson was in fear of her life from her husband and she was wanting to have some protection. We saw that as an opportunity that if she wanted to become a witness for the Government, we protect witnesses. We -- we don't protect private citizens. That's not our normal function.

However, for somebody who became a witness in one of our cases, then that person, we could protect. And in light of that opportunity or potential opportunity we went to the office so that -- so Ms. Rasmusson could be interviewed.

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Q Okay. Now, how do you protect witnesses in a case?

MR. BAKER: Object to the

form of the question. You're asking for privileged information.

Q (By Ms. Sheppard) Well, did you explain to Deborah Rasmusson how -- what kind of protection that U. S. Customs Service could offer her?

A I didn't talk to Deborah Rasmusson, so, no, I did not explain that to her.

Q Did you instruct Special Agent Frost to explain to her what type of protection she could expect from Customs Service if she became a witness for U. S. Customs Service?

A I would not have had to instruct Mr. Frost in that. He is a competent senior special agent who would have known those procedures.

Q Okay. Do you know whether he gave

her instructions on what she could expect if she became a witness for U. S. Customs Service?

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A I did not hear him say so, but I have every confidence that he did so.

Q Okay. Now, where were you located in the office at the time that Deborah Rasmusson and her son arrived?

A I was in my office.

Q And your office in relationship to the door that -- Deborah Rasmusson came in, where was it located?

A Down a hall approximately 35 feet maybe. 35, 40 feet.

Q From your office, were you able to see when Deborah Rasmusson and her son entered

the building?

A No. Not from in my office.

Q From your office, were you able to see what room Deborah Rasmusson and her son were taken to?

A Not from my office, no.

Q Okay. Now, do you know who the other agents were that came with Special Agent Frost?

A I remember some of the other agents who were there that night. I'm not sure I would recall all of them.

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And Group Wilczewski was on the telephone trying to tell the fire department that it was not an emergency so that they would not endanger anybody. And I went to the

control panel to see if I could possibly shut down the fire alarm.

Q Okay. Now, how long did all this take you?

A Quite frankly, ma'am, it seemed like an eternity. It was loud in that building. I would have to give it a wild, wild guess of saying maybe 45 minutes to an hour. And that's -- and that's a guess because I really wasn't looking at my watch at that time.

Q Okay. Now, during this period of time that you were working on this fire alarm situation, was Deborah Rasmusson allowed to leave the Customs building?

A Yes. She left.

Q Okay. Now, you stated that Michael Wilczewski contacted the El Paso Fire Department?

A I believe it was Michael that made the call. I know he was on the phone with

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them for part of the time.

Q Okay. Now, on May 23rd, 1992 during this interview with Deborah Rasmusson, did you see her drink any alcoholic beverages?

A No, ma'am.

Q Were you aware of the fact that Special Agent Frost provided her with alcoholic beverages on May 23rd, 1992?

A Not on that night.

Q Okay. The building that Customs Services is located in is that under the auspices of GSA, General Service Administration?

A GSA does do the renting, yes.

Q Okay. Is there a policy against bringing alcoholic beverages on the premises there?

A Yes, there is.

Q Okay. At the time that you met Deborah Rasmusson, did she appear to be high on a controlled substance?

A Very well could have been. I would describe her as very spacy.

Q Okay. Now, at what point did you learn -- at what point did you learn that

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Special Agent Frost presented a consent to search form to Deborah Rasmusson?

A I don't know the exact time.

Q Was it shortly after she arrived there or shortly before she left?

A Well, I didn't learn about it until after she was gone.

Q Okay. What is the Customs policy on giving alcoholic beverages to witnesses in the Customs office?

A There is no policy.

Q Well, is it permitted?

A It's not permitted, it's -- yes, it is permitted. It's not something that is written or denied to or not to do.

Q Okay. Do you permit your agents to give witnesses in Customs office alcoholic beverages?

A I don't recommend it. There are circumstances when I can see where it has happened over my extended 26-year career.

Q Well, the question is: Do you permit it?

A Do I personally permit it?

25 Q Yes.

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1 A No, ma'am.
2 Q Now, as a supervisor, would you
3 consider it to be appropriate to give alcohol
4 to a witness that you were interviewing?
5 A It would depend entirely upon the
6 circumstances. Generally not.
7 Q Well, as a supervisor, would you
8 approve your special agent giving alcohol to a
9 witness who the agent would like to sign some
10 type of consent form?
11 A No. Certainly not. If it was
12 going to be a factor in it, of course not.
13 Q Okay. Now, at the time that you
14 were tending to the fire alarm situation, you
15 and Michael Wilczewski, where was Agent --

Special Agent Frost?

A I learned later that he was down at the Shamrock station.

Q Okay. So he was not with you at the time you were attending to the fire alarm; is that correct?

A No, ma'am.

Q Okay. Did you go to the -- well, let me ask you this. Who told you he was down there at the Diamond Shamrock station?

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as an OCDETF case.

That does not mean that the case did not have merit. It meant that it was a decision made by management from an administrative standpoint to decertify as an -- from the OCDETF farina.

Q Okay. Now, who were the officials above you that made that decision?

MR. ROBINSON: Object to the form of the question. It's irrelevant to the issue of qualified immunity.

Q (By Ms. Sheppard) Now, from the time that you spent as ASAC -- ASAC on the financial task force, were any criminal charges brought on behalf of the financial task force or Customs Service against Mark B. Rasmusson pertaining to either drug smuggling or money laundering activities?

MR. ROBINSON: Object to the form of the question. The U. S. Attorney's office brings charges against potential defendants.

Q (By Ms. Sheppard) All right.

During the time that you were the ASAC, did you submit to the U. S. Attorney's office any information pertaining to Mark B. Rasmusson indicating that he was engaging in drug smuggling or money laundering activities?

A While I was the ASAC for El Paso operations, I do not recall any.

Q Now, as a result of the financial task force investigation, the Custom Service investigation, Operation Transwestern investigation, however you look at it, was Mark B. Rasmusson ever indicted for drug smuggling money laundering activity or violations?

A During the course of the financial investigation?

Q Yes.

A No, ma'am.
Q During the course of the time it was adopted under Operation Transwestern?
A No, ma'am.
Q Now, during the time of John Peterson's investigation, was Mark Rasmusson indicted or charged with any offenses pertaining to drug smuggling or money

laundering?
MR. ROBINSON: Objection. Form of the question. It's a compound question. There is a difference between being indicted and charged.
Q (By Ms. Sheppard) Well, let's take indictment. Was he indicted?

A Not to my knowledge.
Q Was he charged?
A Not to my knowledge.
Q Okay. Now, to your knowledge, was Mark B. Rasmusson ever charged with tax evasion -- tax evasion as a result of the financial task force investigation?
A Not to my knowledge.
Q As a result of Operation Transwestern?
A Definitely not through the Operation Transwestern.
Q Okay. Now, as a result of John Peterson's investigation, was Mark Rasmusson charged with tax evasion?
A Not to my knowledge.
Q Was Deborah Rasmusson charged with

tax evasion?

A Not to my knowledge.

Q As a result of the Customs investigation, the financial task force investigation, was Deborah Rasmusson ever charged with drug smuggling or money laundering activities?

A Not to my knowledge. I don't believe so.

Q Was Andrew Gantkessy ever charged with drug smuggling or money laundering activities?

A Not to my knowledge.

Q Now, as a result of the Customs investigation, the task force investigation, Operation Transwestern, was Mark B. Rasmusson ever charged with violations of the Bank

Secrecy Act?

A Not to my knowledge.

Q Was he charged with violations -- or with mail fraud violations?

A Not to my knowledge.

Q Was he charged with kickback -- violation of kickback statutes?

A Not to my knowledge.

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Q Was Deborah Rasmusson ever charged with violations of the Bank Secrecy Act?

A Not to my knowledge.

Q Was she ever charged with mail fraud?

A Not to my knowledge.

Q Was she ever charged with

violations of the kickback statutes?

A Not to my knowledge.

Q Was Andrew Gantkessy ever charged with violations of the Bank Secrecy Act?

A Not to my knowledge.

Q Was he ever charged with tax evasion?

A Not to my knowledge.

Q Was he charged with mail fraud?

A Not to my knowledge.

Q Was he ever charged with violations of kickback statutes?

A Not to my knowledge.

Q Okay.

MS. SHEPPARD: I have no further questions.

THE VIDEOGRAPHER: This is the end of tape one. We're off

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF TEXAS

EL PASO DIVISION

MARK B. RASMUSSON, *
ET AL *
*
VS. * CIVIL ACTION:
* EP-95-CA-475-F
LAWRENCE E. FROST, *
ET AL *

VIDEOTAPED DEPOSITION OF

MICHAEL WILCZEWSKI

January 31, 1997

Q Are you ill today or are you taking any medication, drug or other substance that might affect your ability to testify accurately here today?

A No, ma'am.

Q At any point during this deposition, if you feel ill or for any other reason are unable to testify accurately, please tell me immediately and we shall take a recess. Is there any reason at all why you cannot testify accurately here today?

A No, ma'am.

Q Okay. Do you have any questions about what I've just told you or about this deposition?

A No, ma'am.

Q Okay. Now, how long have you been

employed with the U. S. Customs Service?

A Almost 19 years.

Q Okay. And have you been -- have you spent that entire 19 years in El Paso, Texas?

A No, ma'am.

Q Okay. How long have you been in El Paso, Texas?

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A I believe I came to El Paso, Texas in March of 1986.

Q Okay. Now when you were first hired by Customs, U. S. Customs Service or, perhaps, subsequent to your initial training, do you take an oath of office?

A Yes, ma'am.

Q Okay. And in this oath of office,

do you swear to you uphold the Constitution of the United States?

A I believe so, ma'am.

Q Okay. Now, is this oath given to all of the Customs agents?

A I believe it's given to all Federal employees, yes, ma'am.

Q Okay. And do you receive a copy of the Customs special agents handbook as part of your training and reference material?

A I believe I did, yes, ma'am.

Q All right. Now, when did you first become a Customs group supervisor?

A I believe it was 1989 -- or 19 -- excuse me, ma'am. Yes. 1989.

Q 1989?

A I believe so.

Q Okay. And were you an Officer of Enforcement at the time?

A I believe that's what it was called at that time.

Q Okay. And now it's called Office of Investigation?

A Yes, ma'am.

Q Okay. Now, prior to your assignment on the -- as group supervisor of the financial task force, were you group supervisor of a particular type of unit or task force at the time in 1989?

A In 1989, I believe I was the fraud group supervisor.

Q Okay. Now, when did you receive your assignment to become the group supervisor for the financial task force?

A I believe it was February of 1992. And it wasn't the supervisor of the financial task force. It was the supervisor of the financial group and it had a slash, conspiracy investigations group.

Q Okay.

A It was wasn't just solely that.

Q Now, did -- was the financial task

force formed under the financial group?

A Yes, ma'am.

Q Okay. Now, prior to your making assignments to other Customs agents, did you review any of the DA case files pertaining to the Jesus Flores investigation in which Mark Rasmusson was indicted and acquitted on charges?

MR. ROBINSON: Ms. Sheppard, just for clarification of the record, prior to Agent Wilczewski making assignments -- assignments to what?

Q (By Ms. Sheppard) Prior to making assignments to the financial task force, did you review the DA case file pertaining to the Jesus Flores organization and the criminal trial in which Mark B. Rasmusson was tried and acquitted?

A No, ma'am, I didn't.

Q Okay. All right. Is it your testimony you didn't review any of the DA case files the DA6s, Reports of Investigation?

A Yes, ma'am.

MS. SHEPPARD: Well, the information is already a matter of public record. It's not -- the information wasn't redacted off the box.

MR. ROBINSON: He can neither confirm or deny those questions you asked about the case number and the name of the big case.

Q (By Ms. Sheppard) Was there a connection between Mark B. Rasmusson and this larger investigation?

A There was a connection between Mark B. Rasmusson or Rasmark and a larger investigation.

Q Well, what was that connection?

A I believe there were -- I'm not quite sure right now exactly what the connection was. And I'd be guessing if I -- if I tried to -- to answer that question.

Q Frost's affidavit said that Mark B. Rasmusson was part of a conspiracy. Was he part of conspiracy with an individual by the name of Arturo -- Guerrmo Portillo?

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A I'm not sure. I wouldn't know for sure if that were the case, ma'am.

Q Okay. Did you review any reports pertaining to the financial task force investigation of Mr. Rasmusson and Rasmark?

A Yes, I did, ma'am.

Q Okay. And did those reports reveal

who are the -- who the financial task force were saying that Mark B. Rasmusson was in a conspiracy with? Someone. Did it tell you who?

A I don't recall exactly, ma'am.

Q Okay. Now, at the time that you were assigned to the Rasmark portion of this larger money laundering investigation, what was this name of the superior officer in Customs that assigned you to the case?

A I was never assigned to the case.

Q You were assigned to the financial task force. Who was the superior officer that assigned you to the financial task force?

MR. ROBINSON: I'll object to the form of the question. It misrepresents prior testimony.

Q (By Ms. Sheppard) Let me ask you

this question: Who was your immediate supervisor at the time that you served as a group supervisor on the financial task force?

A For a period of time, I'm sure it was assistant special agent in charge Donald Reay. And I believe for a period of time, it would have been assistant special agent in charge, Ronald Smith.

Q And who is the present special agent in charge?

A Currently, the special agent in charge is George McNinney.

Q And who was the special agent in charge at the time you were the group supervisor of the financial task force?

A The special agent in charge at that time was Michael T. Lappe.

Q Okay. Now, at the time that you were assigned to the financial task force as a group supervisor, was John Hensley the Assistant Commissioner of Customs for Enforcement?

A I believe for a portion of the time, he was. I'm not sure for the total time he was.

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Q Okay. Now, was John Hensley the immediate supervisor of the special agent in charge, Michael Lappe?

A I'm not perfectly clear, but I believe he was.

Q Okay. Is John Hensley still with U. S. Customs Service?

A I'm not sure.

Q Okay. Do you know what his exact title was during the period of time you was the -- you were the group supervisor for the financial task force?

A I believe his title was Assistant Commissioner Office of Enforcement.

Q Okay. Now, did John Hensley report directly to Carol Hallet when she was the Commissioner of Customs?

MR. ROBINSON: If you know.

THE WITNESS: I -- I -- I think so. I would think so. I'm not sure.

Q (By Ms. Sheppard) Let me -- I'm sorry.

A That's from Washington, D.C. I

A I'm probably sure I did, yes, ma'am.

Q Okay. And did you have any questions -- did you question them about the -- the results of those surveillance activities?

A I would have seen the results from the surveillance activities in the reports that were written about them.

Q Did those results raise any concerns in your mind about the -- the advisability or the -- the need to continue those surveillance activities?

A No, ma'am.

Q Okay. At any of these briefings that you attended pertaining to surveillance activities, were the surveillance activities

of Rasmark aircraft ever discussed?

A Could you repeat that, please.

Q Okay. At any of the meetings, the briefings, that you attended pertaining to surveillance activities, were the surveillance activities pertaining to Rasmark aircraft ever discussed?

A I'm not sure. They might have

been. I'm not sure.

Q Okay. Now, did you participate in the planning of the search warrant that Special Agent Frost put together for the Rasmark office on -- let's look at the May 23rd -- the Rasmark office on November 22nd, 1993. Did you participate in the preparation of that search warrant or the affidavit to

that search warrant?

A I reviewed them, yes, ma'am.

Q Okay. Did you participate in the planning of how the search was going to be carried out?

A I believe I did, yes, ma'am.

Q Did you participate in the planning on how the search was going to be carried out at both the residence and at the office, the Rasmark office?

A To some extent, yes, ma'am.

Q Okay. Were you aware of the fact that Rasmark aircraft was intercepted by Customs agents at Dallas Love Field in June 1993?

A No, ma'am. I -- I don't recall that.

Q Okay. Did you ever receive any reports pertaining to that interception in June 1993?

A I never received any reports.

Q Okay. Let's see. Did you know the district director, Mike Mack, M-a-c-k? And he was district director at El Paso in 1989.

A Yes, ma'am.

Q Okay. Did you have any occasions to review the district director case files pertaining to the compliance history of Rasmark Jet Charter, Inc.?

A I don't recall reviewing any case file at the district director's office.

Q Did you instruct any of the members of the financial task force to review the compliance history of Rasmark Jet Charter,

Inc. that -- contained in the district director's case files?

A No, I don't believe I did.

Q Okay. Do you know an individual by the name of William Nowak, N-o-w-a-k? He was the director of inspection and control division for Customs in the office of district director in El Paso in 1989.

A Yes, ma'am.

Q Okay. Did you have any occasions to review any of his case files pertaining to compliance activities of Rasmark Jet Charter, Inc.?

A I don't recall ever seeing any of his files on Rasmark Jet Charter, Inc.

Q Okay. Now, did you have any

discussions with Mr. Mack pertaining to Rasmark Jet Charter, Inc.?

A I don't recall any discussions with Mr. Mack about Rasmark Jet Charter, Inc.

Q Okay. Did you have any discussions with Mr. Nowak pertaining to Rasmark Jet Charter, Inc.?

A Not that I can recall, no, ma'am.

Q Are you aware of the fact that in 1989, that Mark B. Rasmusson and other pilots had a meeting with Customs Service pertaining to the treatment they received from Customs agents in the manner in the way they searched the airplanes and the manner of the way they intercepted the airplanes? Do you -- were you aware of any complaints?

A No, ma'am.

approximate -- you don't have to give me an exact date -- when this training took place?

A I don't know the exact date. It was a short time after the task force was formulated that they were given extensive training in all aspects of money laundering investigations.

Q Okay. Now, did this training include drug smuggling, as well?

A I don't believe so, ma'am. No.

Q Did this training include tax evasion, how to gather facts and how to recognize and gather facts pertaining to tax evasion?

MR. ROBINSON: Ms. Sheppard, again, are you referring to the training he personally gave

or other employees?

MS. SHEPPARD: I'm only talking about him in his position as group supervisor.

MR. ROBINSON: That's what I'm getting at. Are you -- his training he actually personally conducted or at his request,

another employee conducted for the group?

Q (By Ms. Sheppard) Well, under -- under your group -- under your position as group supervisor, did you personally provide training or did you instruct anyone else to provide training under your supervision?

A I obtained training opportunities

from different instructors on different elements of the investigation.

Q Okay. Now, was that training obtained prior to March of 1992 or was that training given by -- or given to financial task force members prior to March 1992 --

A No, ma'am.

Q -- pertaining to the drug smuggling and money laundering?

A No, ma'am.

Q Was it given prior to March 1992 pertaining to violations of the Bank Secrecy Act?

A No, ma'am.

Q Was it given pertaining to -- prior to 1992 pertaining to tax evasion?

MR. ROBINSON: I'm going to

object to the form of the question. Again, are you asking training that he personally gave? Are you talking about his personal involvement or did he ask someone else to provide training?

Q (By Ms. Sheppard) Let me ask you this question: Prior to the May 23rd, 1992 incident concerning Deborah Rasmusson, did you provide any type of inservice training, either you personally or did you instruct anyone else to provide inservice training, to the financial task force or to any Customs agents on how to develop potential witnesses who is a spouse of the target of the investigation?

A Could you read the time frame and the --

Q Prior to May 23rd, 1992 --
A Prior to May 23rd --
Q -- 1992, did you, yourself, provide training or did you instruct anyone else to provide training to members of the task force pertaining to how to develop a potential witness who is a spouse of a target of the investigation?

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A Training specific as you worded it --
Q Yes.
A -- I don't believe so.
MR. ROBINSON: Is that the incident -- are you talking about the box -- the box incident?

MS. SHEPPARD: I said prior to that May 23rd, 1992.

MR. ROBINSON: Okay. Repeat the question one more time time so we're clear.

Q (By Ms. Sheppard) Okay. Prior to May 23rd, 1992 incident -- are you familiar with the May 23rd, 1992 incident concerning Deborah Rasmusson? Let me ask you that first.

A I'm guessing you're talking about the -- the box?

Q Yes.

A And her coming to the offices of investigations?

Q Yes.

A That occasion, yes, ma'am, I remember it not by date but by --

Q The events?

supervision provide any type of inservice training pertaining to use of off duty local police officers as informants? This is subsequent. After the events of May 23rd, 1992.

A Use of off duty officers as informants?

Q Yes. Off duty local police officers as informants.

A No, ma'am.

Q. Okay. Now, after the May 23rd, 1992 incident, did that raise any questions in your mind about how the Customs agents carried out their seizure of that box from Deborah Rasmusson and her son, Ian Maye?

A Can you say that again?

Q Okay. After the May 23rd, 1992

incident, did that raise any question in your mind about the way the financial task force members carried out that warrantless seizure of the box from Deborah Rasmusson and her son?

MR. ROBINSON: I'm going to object to the form of the question to the extent that you're -- it's a vague question. Ask it one more

time. Ask him for -- ask the question again. I'm sorry.

Q (By Ms. Sheppard) After the events of the May 23rd, 1992 seizure -- the warrantless seizure of the box from Deborah Rasmusson and her son, did that raise any questions in your mind about the type of procedures that were used by the financial

task force members to get that box?

A No, ma'am. It was lawful and correct.

Q Okay. Now, you're aware of the fact that Deborah Rasmusson was given beer at the time she was in the Customs office during the interview with Customs Agent Frost; isn't that correct?

A That's what was said in the depositions, yes, ma'am.

Q Okay. Now, did you discipline any of the financial task force members for giving beer to Deborah Rasmusson during an interview in the Customs office?

MR. ROBINSON: Objection to the form of the question. It's irrelevant to the issues of

qualified immunity.

Q (By Ms. Sheppard) Would you -- did you instruct Special Agent Frost or any members of the financial task force to provide alcoholic beverages to Deborah Rasmusson during the interview of May 23rd, 1992?

A No, ma'am.

Q And after learning that the beer was provided, did you take any type of disciplinary action against any members of the financial task force for having provided that beer?

MR. ROBINSON: Objection. Form of the question. It's irrelevant to the issues of qualified immunity. And it's been asked and objected to previously.

Q (By Ms. Sheppard) Let me ask you this question: Prior to Special Agent Frost preparing his affidavit for the November 22nd, 1993 search warrant, did you conduct any type of inservice training -- you or anyone under your supervision -- to the financial task force pertaining to the use of stale and uncorroborating information in an affidavit

for a search warrant?

A Could you clarify what search warrant you're talking about now.

Q I'm speaking of the two search warrant affidavits that Special Agent Frost prepared --

MR. BAKER: For the

residence and the business?

Q (By Ms. Sheppard) Right. November 19, 1993.

Prior to the preparation of those two search warrants, did you or anyone under your supervision conduct any type of inservice training pertaining to the use of stale and uncorroborating information in affidavits?

A I don't believe so, ma'am. No.

Q Okay. Now what agencies were assigned full-time to the financial task force?

A The United States Customs Service, the El Paso Sheriff's Department, the El Paso Police Department.

Q Okay. Now, what agents participated in the task force on an as-needed basis?

thought would have occurred if -- if Mr. Gantkessy received this money. Now, did you ever get any report indicating that Mr. Rasmusson or Andrew Gantkessy was charged with criminal violations of tax laws?

MR. ROBINSON: Object to the form of the question. You misstated -- mischaracterized previous testimony. I think what Agent Wilczewski has testified to is what Agent -- Gantkessy told the agents that interviewed Mr. Gantkessy. And it's a compound question.

Q (By Ms. Sheppard) Now, did Mr. Gantkessy tell you that he violated tax laws?

A I never spoke to Mr. Gantkessy.

Q Did you read any reports where Mr. Gantkessy said he violated tax laws?

A I don't recall reading any reports that said Mr. Gantkessy violated tax laws.

Q Now, did any charge of the task force -- financial task force bring any charges against Mr. Gantkessy or Mr. Rasmusson as a result of any information they received

from Mr. Gantkessy during the June 2nd, 1993 interview of Mr. Gantkessy?

A I don't recall any charges being brought against Mr. Gantkessy.

Q Why not?

MR. ROBINSON: I'll object to the form of the question. That has to do with the prosecutor

discretion at the U. S. Attorney's office. The U. S. Attorney's office brings charges, not the U. S. Customs Service.

Q (By Ms. Sheppard) Now, were any charges brought against Mr. Gantkessy or Mr. Rasmusson as a result of the interview with Mr. Gantkessy on June 3rd, 1993 pertaining to tax evasion?

A No, ma'am.

Q Were any charges brought pertaining to money laundering or -- or violations of Bank Secrecy Act as a result of, first, the interview of June 2nd, 1993?

A No, ma'am.

Q Were any charges brought against Mr. Gantkessy or Mr. Rasmusson or any of the

other plaintiffs pertaining to violations of the mail fraud statutes?

A No, ma'am.

Q Any charges brought pertaining to violations of kickback schemes?

A No, ma'am.

Q Okay. Now, was Mr. Gantkessy -- Gantkessy ever a suspect in any Federal violation over which the Customs Service has authority, has jurisdiction?

A Possibly, yes, ma'am.

Q Well, what charge?

A I don't recall any charges, ma'am.

Q What -- what were you investigating? What was Customs Service, the financial task force, investigating? What type of violation against Mr. Gantkessy?

MR. ROBINSON: I'll object to the form of the question. You're mischaracterizing prior testimony. I don't think that's ever been stated in prior testimony.

Q (By Ms. Sheppard) Did you read any reports where the financial task force or the

Customs Service indicated that Mr. Gantkessy had violated any of the Customs -- any Federal violation over which the Customs Service has jurisdiction?

A I don't recall reading any reports that had that in that, no, ma'am.

Q Okay. Now, were you aware that Special Agent Frost and the financial task

force intended to confront and interview Andrew Gantkessy in his office with five or six agents on June 6, 1993?

MR. ROBINSON: Object to the form of the question. You're mischaracterizing previous testimony.

Q (By Ms. Sheppard) Were you aware of the fact that Special Agent Frost and the financial task force had planned a meeting for June 2nd, 1993 with Mr. Andrew Gantkessy?

A I may have been. I don't specifically remember what their plans were. So I don't know that I was aware before they went to do their interview. I can't recall that exactly, no, ma'am.

Q Well, do you recall whether you

MR. ROBINSON: Repeat that question one more time, please.

Q (By Ms. Sheppard) During the searches of the Rasmark office and the Rasmusson home, did the task force agent find any significant evidence of Federal crimes pertaining to drug smuggling or money laundering involving either Mark Rasmusson or Deborah Rasmusson?

MR. ROBINSON: I object to the form of the question to the extent you have significant evidence. That's a vague question.

Q (By Ms. Sheppard) During the entire course of the Rasmark investigation from March 1992 to April 94, the period of

time you were the group supervisor, was Mark B. Rasmusson, Deborah Rasmusson, Andrew Gantkessy or Rasmark Jet Charter, Inc. ever indicted for any charges for any of the investigation done by the task force?

A I don't believe so, no, ma'am.

Q Were you present when the OCDEFT committee decertified the larger money

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF TEXAS

EL PASO DIVISION

MARK B. RASMUSSON, *
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*
VS. * CIVIL ACTION:
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LAWRENCE E. FROST, *
ET AL *

VIDEOTAPED DEPOSITION OF

NEIL AARON BAKER

January 31, 1997

testify accurately -- accurately today?

A No, ma'am.

Q At any point during this deposition if you feel ill or for any other reason are unable to testify accurately, please tell me immediately and we shall take a recess. Is there any reason at all why you cannot testify accurately here today?

A No, ma'am.

Q Do you have any questions about what I have just told you or about this deposition?

A No, ma'am. But you're going to have to speak up. I'm hard of hearing in one -- one ear. So if I don't understand what you're saying and I ask you to repeat the question, would you please, if I don't hear.

Q Okay. Well, thank you. Thanks for letting me know. I didn't -- I didn't know that. I'll just kind of turn this direction.

Now, what is your present position at the El Paso Sheriff's Department?

A I'm a detective.

Q How long have you been employed by

the sheriff's department?

A 18 and a half years.

Q Okay. And how long have you been a detective?

A I believe 12 years.

Q 12 years. Now, prior to working for the El Paso Sheriff's Department, did -- did you have any other prior law enforcement

experience?

A I worked for -- I was a field supervisor for a security company at one time and I also attended college and majored in law enforcement.

Q Now, when were you assigned to the financial task force?

A You mean the financial task force -- I was assigned to the special operations unit. But when they -- what's the best way to put it. You're speaking in terms of like when I was assigned to the Rasmusson case. Correct?

Q Well, let's see. You were assigned to special operations --

A Back in --

Q What year?

A In 1990.

Q 1990?

A Yes, ma'am.

Q Now, at the time that you were assigned to the special operations, did El Paso Sheriff's Department already -- had already formed a multi-county task force?

A Yes, ma'am.

Q Okay. And was that task force already participating in investigations pertaining to Mark B. Rasmusson or any of the plaintiffs in this Rasmark case?

A No, ma'am.

Q Okay. Now, when did the El Paso County Sheriff's Department multi-county task force join the Federal financial task force?

A I believe January of 1993.

Q Okay. Now, when were you first assigned to assist the Federal financial task force?

A January of 1993.

Q Okay. And how many months were you assigned to the financial task force?

A I was assigned the Rasmusson case from January '93 until January or February of

1994.

Q Okay. Now, after your assignment -- did your assignment change or was the case discontinued?

A My assignment was changed.

Q Okay. And what was your assignment changed to?

A I went back to normal duties with

the -- the task force.

Q Okay. Now, did any of those normal duties pertain to any of the plaintiffs in the Rasmark case?

A No, ma'am.

Q Okay. Now, who was your supervisor for the -- on the special operations division?

A My immediate supervisor was -- at the time was Lieutenant Gary Gabbert.

Q Okay. And who was the supervisor of the El Paso Sheriff's Department task -- multi-county task force?

A It was Lieutenant Gary Gabbert was the immediate supervisor.

Q Okay. Now, was this your first time working on a Federal task force?

A No, ma'am.

Q Okay. Now, when you were assigned to this Federal financial task force, who was your supervisor on the -- on the financial task force?

A Do you mean the sheriff's department supervisor or -- my immediate supervisor was Lieutenant Gary Gabbert.

Q Okay. Now with regard to your activities on the financial task force, the Federal financial task force, who was your supervisor?

A He was still my -- my supervisor.

Q Okay. Now, how often did you report your activities pertaining to the Rasmark case to your immediate supervisor?

A Very rarely to Lieutenant Gabbert. He was my overall supervisor, but I reported

to -- to Customs on a daily basis.

Q Okay. Now, who did you report to on a daily basis with Customs?

A I generally reported in with Fred Schroeder, Special Agent Schroeder.

Q Anyone else?

A He was the one I normally reported in to. I may have reported in once or twice

to -- to his supervisor would be Mike Wilczewski.

Q Okay. Now, when you reported to your immediate supervisor for the sheriff's department, his name was Lieutenant --

A Lieutenant Gary Gabbert.

Q Gabbert?

A Gabbert, G-a-b-b-e-r-t.

Q Oh, Gabbert. Okay. Lieutenant Gabbert.

Did you give him any written reports pertaining to your activities with the financial task force?

A No, ma'am.

Q Okay. When you reported to Special Agent Fred Schroeder, did you give him written reports of your activities pertaining to the assignments given to you?

A I gave him a disc, computer disc, and he would take care of it from there. I'd -- I'd put the report on a -- have a secretary put the report on a disc and then I would give him the disc.

Q Okay. Now, did you maintain all your notes, field notes, from which you made

the disc?

A At that time, I didn't keep very -- very good field notes, so I don't think I have any of them from that period.

Q Okay. Did you print out any of the discs before giving it to Special Agent Schroeder?

A No, ma'am, I did not.

Q Did you give your immediate supervisor, Lieutenant Gabbert, a copy of this disc?

A No, ma'am.

Q Okay. Now, the period of time that you worked on the case, January '93 through February '94, did you work exclusively on the Rasmark portion of this larger money laundering investigation?

A No, ma'am. I had my normal function and plus what we had with the Rasmark case.

Q What was your normal functions?

A Well, I still conducted investigations that the sheriff's department had me conduct.

Q Okay. Now, what percentage of your

time did you spend on the Rasmark portion, this larger money laundering investigation?

A Probably 35 to 50 percent. It -- it depended.

Q Okay. Now, when you were first assigned to this Rasmark case, to -- to work on the Rasmark case, were you given a briefing on the background of Mark Rasmusson and

Rasmark Jet Charter, Inc.?

A Yes, ma'am.

Q Okay. Who gave you this briefing?

A I believe it was Fred Schroeder and Larry Frost.

Q Okay. Now, what information did they tell you during this briefing?

MR. CASTILLO: I'm going to object to the extent that the response may seek to elicit information which is protected by the grand jury privilege and, also, to any information which may be protected by the investigative privilege. You may testify as to anything that doesn't fall within those areas.

MS. SHEPPARD: Okay. Are you instructing the witness not to answer the question?

MR. CASTILLO: I'm objecting to the -- to the question to the extent that it's seeking information which is protected by the grand jury privilege and the investigative privilege.

Q (By Ms. Sheppard) Okay. Are you -- Mr. Baker, have you had any training at all in the type of materials that relate to grand jury investigation?

A I believe the question you're asking me is: Do I know about divulging grand jury information?

Q No. That's not the question I asked you.

Have you had any training in the type of material that is included in grand jury investigation?

A Yes, ma'am.

Q Okay. And my question to you: During the briefing, what information were you

given pertaining to Mark B. Rasmusson and Rasmark Jet Charter Service?

MR. CASTILLO: And I'd like to restate -- reurge the objection I stated earlier. To the extent that the question may seek information which is protected by the grand jury privilege and the

investigative privilege.

Q (By Ms. Sheppard) Okay. What information were you given that were not grand jury information?

A I was given a basic outline of the case to the point to where we -- we entered into it.

Q And what did that basic outline consist of?

A An overall -- essentially, what it was was a time line of what transpired from day one until present.

Q When was day one?

A I believe -- if my memory serves me right, about 1990. The year 1990. I -- I was given some Report of Incidents, ROIs, to look at and then that was basically what my --

my -- my briefing was, that and given other information, also.

Q Okay. Now, these reports of ROIs that you refer to, the Report of Investigation, were they prepared by the Customs Service or were they prepared by DEA?

A I believe some of it was DEA and some of it was Customs Service.

Q Okay. Did you review all of the DEA case file, the Report of Investigation, DEA6 Report of Investigation forms, pertaining to Jesus Flores investigation which included Mark B. Rasmusson?

A I've read some of the reports on that.

Q Okay. Did you review the criminal trial transcript pertaining to Mark B.

Rasmusson?

A No, ma'am.

Q Okay. What were you told was the aim and focus of the case, the Rasmark case?

A I wasn't ever told --

MR. CASTILLO: I'm going to object to the extent this question may seek to elicit any

investigative techniques.

Q (By Ms. Sheppard) Without revealing any investigative techniques, can you tell me what was the focus -- what were you told was the focus of the Rasmark investigation?

A My instructions were to assist U. S. Customs Service in anything they needed

done that they saw needed to be done. I was there to assist them. It was not a sheriff's department investigation. It was a task force investigation. And I was assigned as a member of the task force.

Q Okay. Now, were you told during this briefing, this initial briefing, what your role would be in this Rasmark portion of the larger investigation?

A I was basically told that I would assist them in what they needed done.

Q You weren't given any specific assignments at that point?

A Not at that point, no, ma'am.

Q Okay. Now, did you participate in the larger part of this money laundering investigation or did you just participate in

the Rasmark portion of the -- of the investigation?

MR. CASTILLO: I object to -- to the extent that the question is vague. It has not been identified what is the larger part of the investigation or the Rasmark part of the investigation as far as this witness is concerned. He's not been present during any prior testimony. So to that extent, I would ask that you clarify what you mean by larger part of investigation.

Q (By Ms. Sheppard) Okay. Now, were you told at the time that you were assigned to the financial task force that you were

investigating a larger money laundering organization?

A I was told it was a large money laundering organization, yes, ma'am.

Q Okay. And did you participate in any investigation of this larger money laundering organization?

A I -- I think you need to rephrase

the question. What I'm getting at is I worked a large -- other people other than the Rasmussons, yes, ma'am, if that's what you're asking.

Q Well, what I'm asking you is that the Rasmark case was adopted as part of a larger money laundering organization or investigation. Did you work on both aspects

of the case? Did you work on the larger money laundering organization or just on the Rasmark portion of this larger money laundering investigation?

A I worked mainly Rasmark, Rasmusson.

Q Okay. Now, how often did you attend briefings on the status of the overall investigation of the Rasmark portion of the case?

A I checked in everyday with the agent that was -- I guess you would call him my supervisor. I checked in everyday with him.

Q And you're speaking of --

A Fred Schroeder.

Q Okay. And did you receive

briefings on a daily basis?

A Not as much briefings as I was -- I was told what was going on. They weren't big massive briefings, no, ma'am.

Q Okay. And you were told what was going on by Special Agent Schroeder. Is that -- is that correct?

A Yes, ma'am.

Q Okay. Now, what were your specific duties during the time that you were assigned to the Rasmark portion of the financial task force investigation?

MR. CASTILLO: I would object to the extent that the question seeks to elicit any information which is protected by the investigative privilege or any

information which is protected by the grand jury privilege.

Q (By Ms. Sheppard) And without revealing information that's protected by the grand jury privilege or investigative privilege, what were your duties during the time you were assigned to the financial task force?

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A I was assigned to assist them in whatever they needed done that particular day. There was no real set assigned duties.

Q Do you remember any duties that you performed?

A I performed surveillance. I performed some trash pickups. I went down and checked some records that were public record.

Q Okay.

A I --

Q I'm sorry. Go ahead.

A I believe I was involved in one or two interviews.

Q Okay. Now, on the surveillance, did you participate in surveillance of the Rasmusson home on Leo Collins Drive?

A I've driven by there, yes, ma'am.

Q Did you participate in the surveillance of the Mark B. Rasmusson home on Dale Douglas?

A I've driven by there, yes, ma'am.

Q Okay. And you say you went -- searched the public records. What public records did you search?

A I've checked records with the

District Clerk's office reference a -- in the divorce -- I believe Debbie and Mark were going through at that time.

Q Were there any other public records that you searched?

A None that I can remember, ma'am.

Q Okay. And you stated that you also participated in interviews. What interviews did you participate in?

MR. CASTILLO: I'd object to the extent that it seeks to disclose any confidential informants.

Q (By Ms. Sheppard) Without revealing any names of confidential informants, did you interview any noninformant people?

A I -- people that I was involved in interviews with, I would consider informants.

Q Okay. Did you interview -- were you -- did you participate in the interview with Gail Beech?

A No, ma'am, I did not.

Q Did you participate in the interview with Andrew Gantkessy?

A No, ma'am, I did not.

Q Did you participate in the interview with Christopher Hines?

A No, ma'am, I did not.

Q Did you participate in the interview with Mark McAllister?

A No, ma'am, I did not.

MR. CASTILLO: At this

point, I would object to the extent that in -- in giving this witness names to identify as to whether or not he's interviewed them, an attempt may be made to reveal a confidential informant. To the extent that you're asking whether or not he's interviewed any of the parties to this lawsuit, I do not have an objection.

But I do object to providing names to -- to the witness to identify whether or not he's interviewed. Such a tactic may require disclosure of confidential informant.

along this line.

Q (By Ms. Sheppard) Well, let me ask you this question: Albert Apodaca, do you know that name?

A No, ma'am, I don't.

Q Okay. Did you participate in any of the trash pickups at the Rasmark -- at Rasmark Jet Charter, Inc. office?

A No, ma'am. Not at the office.

Q Okay. You -- you did participate, however, in trash pickups at the Rasmusson residence at Leo Collins?

A Yes, ma'am.

Q Did you participate in trash pickups at Dale Douglas, the Mark B. Rasmusson home on Dale Douglas?

A I believe I -- I may have there,

also, yes, ma'am.

Q Okay. Now, during the -- can you tell me how you conducted the trash pickup?

A I would pick up the trash from an employee of the El Paso Sanitation Department.

Q Okay. And did you get the name of the employee that you picked up the trash

from?

A No, ma'am, I did not.

Q Well, how do you maintain a chain of custody on the evidence that you picked up from the sanitation worker?

A I observed them picking it up. It never left my sight.

Q Yes. But for purposes of developing the case, did you prepare a report on who you obtained the trash from?

A No, ma'am. I just put down that we picked it up from the El Paso Sanitation Department.

Q Okay. So you did not maintain a chain of custody is what -- is that your testimony?

MR. CASTILLO: I'm going to object to -- to the characterization of the testimony. At no time did this witness testify that he did not maintain chain of custody.

Q (By Ms. Sheppard) Okay. Now, each occasion that you picked up the trash, did you write up a report indicating who the

sanitation worker -- the name of the sanitation worker that handed you the trash?

MR. CASTILLO: I'm going to object. It's been asked and answered.

Q (By Ms. Sheppard) As on each -- each occasion?

A I put on the report that I picked it up from an employee of the El Paso Sanitation Department.

Q Did you put the name of the employee?

A No, ma'am, I did not.

Q Okay. Now, over what period of time did you participate in the trash pickups pertaining to the Rasmark case?

A From probably January or February

or 1993 until December of that same year.

Q Okay. Did you participate in any trash pickups in 1996?

A No, ma'am.

Q Are you aware of any trash pickups from the Rasmusson home in 1996, around June of 1996?

A No, ma'am.

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Q Okay. Now, during any of these trash pickups, did you ever go on the premises of the Rasmark residence --

A No, ma'am.

Q -- to retrieve trash from the combiner?

A No.

MR. BAKER: Just a minute.

You said "Rasmark residence". I don't think there is such a thing.

Q (By Ms. Sheppard) Did you -- during any of the trash pickups, did you ever go on to the premises of the Rasmusson home on Leo Collins Drive to retrieve the trash from the combiner attached to the house?

A No, ma'am.

Q Okay. Did you ever observe any other law enforcement officer go on the premises of the Rasmusson home to retrieve trash from the combiner attached to the home?

A No, ma'am.

Q Now, did you submit a letter to the sanitation department prior to the trash pickups requesting approval to -- for them to

have their sanitation worker to give you the trash?

A I did not, no, ma'am.

Q Are you aware of a letter being submitted to the sanitation department to request approval for you to receive trash from the sanitation workers?

A I'm aware that there was a letter, yes, ma'am.

Q Did you ever read the letter?

A No, ma'am.

Q Okay. And who told you there was a letter?

A I believe I was told by -- I think it was either Bob Holland or Fred Schroeder.

Q Okay. Now, what type of reports did you prepare on each of the trash -- trash pickups that you conducted?

A I hand wrote a report, had our secretary put it on a disk. I gave the disk to Fred Schroeder. And I would shred up the handwritten report.

Q Now, did you ever search any of the garbage bags -- did the trash come in garbage bags or how did -- how was it -- how did you

receive it? What form?

A Sometimes it came in a garbage bag. Sometimes we would provide the sanitation department garbage bags so that it would be placed in the garbage. They would -- we'd meet them at a location and they'd give

it to us.

Q Okay. Now, did you ever assist in the inventory of the contents of these bags once you retrieved them from the sanitation department?

A Once we processed the trash, I would handwrite up notes on what was in there. I would turn the evidence over to Fred Schroeder. I would give them the disk with what we found on it and he would take care of it from there.

Q When you say you "processed the trash", how did you process the trash?

A Processing means going through it.

Q Okay. And so did you do the initial processing of the trash?

A On -- on some occasions, I did, yes, ma'am.

Q Okay. And on those occasions, did

you make a log for every item that was in that trash bag?

A I would make a report, have my secretary put it on a -- on a disk and I would give the report -- or the disk to Fred Schroeder.

Q Okay. Is that of every item that was in the trash?

A It would -- it would have an inventory of what was in the trash, yes, ma'am.

Q Okay. And did you turn the report of this log over to your immediate supervisor, Lieutenant Gabbert?

A No, ma'am.

Q Did you turn a report in to the evidence -- was there an evidence room? Where

did you keep this -- this trash that you inventoried? Once you completed the inventory, where did you put the trash?

A Once I processed the trash and took items out that -- that I thought might be of interest or value, I would put it in a bag -- first of all, I'd inventory it. I'd put it in a bag. I would then turn it over to Fred

Schroeder. At that point in time, I'd go back, make the report, handwritten report. A secretary would put it in the disk and then I'd hand him the disk.

Q Okay. And do you know where all of the items that you inventoried, where they are located today?

A No, ma'am, I do not know where

they're at.

Q Okay. Have you seen them since you did your inventory?

A No, ma'am.

Q Now, when you observed the sanitation department employees, did they collect trash from more residence than just the Rasmusson residence before you retrieved your trash?

A Yes, ma'am.

Q Okay. Now, who accompanied you on the trash pickups that you conducted?

A I was -- most of the times, I was generally alone.

Q Okay. On those occasions when you were not alone, who were with you?

A On a few occasions, my partner,

Detective Jerry Keith.

Q Anyone else?

A There may have been at a time, but I -- I don't remember.

Q Okay. Now -- excuse me.

From your inventory on the occasions that you conducted the inventory of the trash pickups, did you ever find any drugs or contraband in the trash?

A Myself?

Q Yes.

A Depends on what you want to call contraband. I picked up items that I thought were of value to the U. S. Customs case, yes.

Q What items were these?

A Items with -- it looked like

ledgers, receipts and so forth.

Q Okay. Now, have you had any training in recognizing criminal activity or documents that indicate criminal activity?

A Yes, ma'am.

Q Okay. And did you see in any of those documents that you retrieved from the trash, evidence that indicated there was drug smuggling going on?

A From what I -- I can remember what I picked up, I didn't find anything that -- that would actually say that there was drug smuggling. I mean, there is several things you look for and -- and, you know, I thought there -- from what I saw that I was trying to put together was, you know, looked promising

of some type of laundering.

Q Okay. Now, what did you see that looked promising to you of some type of laundering?

A Some of the locations where the -- the receipts were from, you know, like I found some -- I believe we found some receipts from the Cayman Islands. That's an offshore banking area there. Some other stuff that I found that -- that I can remember that I found in the trash was -- you know, looked like ledgers, but --

Q Okay. Now, did you do any type of follow-up investigation to ascertain whether this information you thought looked like it indicated something -- some kind of offshore bank account or might be a possibility, did you check it out to see if Mark B. Rasmusson

or Deborah Rasmusson or Rasmark Jet Charter, Inc. had any bank accounts in the Cayman Islands?

A I never did, no, ma'am.

Q Okay. So outside of your having mere suspicions that it might pertain to that, you never obtained any type of corroboration, did you?

A No, ma'am.

Q Okay. Now, in reference to ledgers, were you aware of the fact that Mark B. Rasmusson and Deborah Rasmusson owned a business?

A Yes, ma'am.

Q A rather successful business?

A Yes, ma'am.

MR. CASTILLO: I'm going to

object to the characterization of that. There is no evidence in the record that this was not a successful business. This is something this witness would not be aware of.

Q (By Ms. Sheppard) Okay. You were aware of the fact that they owned a jet

charter service?

A Yes, ma'am.

Q And you were aware of the fact that a business maintains ledgers and other business records?

A Yes, ma'am.

Q Now, the ledgers that you saw in the trash, were they pertaining to Rasmark Jet

Charter, Inc. business?

A Yes, ma'am.

Q Okay. Would you find that to be unusual that the Rasmark Jet Charter, Inc. would have ledgers?

A I would find it unusual being at your house, yes, ma'am.

Q Well, is there a law saying the owner can't take his business records home with him if he choose to?

A No, ma'am.

Q Okay. Have you ever owned a business, your own business?

MR. CASTILLO: I'm going to object to, first of all, the relevance. It also has -- is irrelevant to the issue of

qualified immunity for which the purpose of this deposition is being conducted.

Q (By Ms. Sheppard) Now, were any drugs found -- did you find any drugs in the trash pickups?

A I, myself, no, ma'am. I don't believe I -- I can't remember if I ever did or not.

Q Okay. Do you recall seeing any reports where drugs were -- were -- indicated drugs were found in trash pickups from the Rasmusson residence?

A I believe on at least one occasion, there was residue amount found.

Q Okay. And what type of residue amount was this?

A I believe cocaine.
Q Okay. Was that residue amount enough to indicate whether it was a user amount or a distribution amount?
MR. CASTILLO: I'd object to the form of the question in that it calls for speculation. This witness testified that he has

no personal knowledge of that and -- and only recalls having seen it in a report.
Q (By Ms. Sheppard) Well, did the report indicate whether it was an amount of -- indicating whether it was classified as a user amount or was it classified as a distribution amount?

A The best that I can remember, it never stipulated whether it was a user. It just said a trace amount was found.

Q Okay. Do you know whether the report indicated whether this trace amount was sent to a lab to be analyzed?

A No, ma'am.

Q Are you saying that it didn't indicate that it had been sent or that you know that the report indicated that it was not?

A I have no knowledge that it was sent.

Q Okay. Now, did you or anyone conduct fingerprint examinations from any objects that you found in the trash from the Rasmusson residence?

A No, ma'am. Not to my knowledge.

Q Did you conduct any fingerprint examinations from the trash collected from Mark B. Rasmusson home on Dale Douglas?

A Not to my knowledge, no, ma'am.

Q Okay. Are you aware of any trash being collected from the Rasmark Jet Charter, Inc.?

A I'm not aware of that, no, ma'am.

Q Okay. Now, during the time that you were collecting trash, did you ever suggest to your supervisor or to Special Agent Schroeder that fingerprint examinations needed to be done on some of the items that you found in the trash?

A No, ma'am.

MR. CASTILLO: I'm going --

I'm going to object, first of all, in that it's an overbroad question. You -- you asked whether or not the witness has ever objected to his supervisor, to Fred Schroeder. He's testified that he has a supervisor within the sheriff's department.

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So to that extent, I would ask that you clarify the question as to who you were asking whether or not he reported anything to.

Q (By Ms. Sheppard) Did you ever request or talk to Special Agent Schroeder about having finger -- fingerprint examinations done on any of the items that you retrieved from the -- from the trash from

Deborah Rasmusson's residence or from the Rasmusson Leo Collins residence?

A No, ma'am.

Q The same question regarding the fingerprint examinations. Did you request that Special Agent Schroeder do any fingerprints examination from trash pickups of the Dale Douglas residence?

A No, ma'am.

Q Do you recall on how many occasions you did surveillance of the Rasmusson residence on Leo Collins?

A No, ma'am.

Q Do you recall on any of those occasions whether you observed any criminal activity pertaining to money laundering or

drug smuggling taking place?

A No, ma'am.

Q Now, on the -- do you recall how many occasions you did surveillance of the Mark B. Rasmusson residence on Dale Douglas?

A No. I don't recall how many times, no, ma'am.

Q Okay. Do you recall on the occasions that you did those surveillances of the Dale Douglas address, did you see any -- did you observe any criminal activity pertaining to drug smuggling or money laundering taking place?

A No, ma'am.

Q Did you conduct any surveillances -- any surveillance of Andrew A. Gantkessy?

A Yes, ma'am.

Q Okay. And did you conduct those surveillance at his home?

A They were at his house, yes, ma'am.
Q Okay. Did you conduct any surveillance of Andrew A. Gantkessy at his employment at Ford Motor Company?
A No. I don't recall doing any

there, no, ma'am.
Q Okay. Now, what was -- were you given the purpose of the surveillance of Andrew A. Gantkessy?
A Just to drive by his house and cheek and see if he was there or not. That's --
Q Okay. On the occasion that you drove by to conduct the surveillance on Mr. Gantkessy, did you observe any type of

criminal activity pertaining to drug smuggling or -- smuggling or money laundering?

A No, ma'am.

Q Okay. How many times did you conduct surveillance on Mr. Gantkessy?

A I don't recall.

Q Well, you have no recollection?

A Numerous times is all I -- all I could tell you. I don't recall the exact number.

Q Okay. How long did the surveillances -- the surveillance activity of Mr. Gantkessy last?

MR. CASTILLO: I'm going to object to the extent that it calls

was prior testimony -- and, of course, you

weren't here, but let me ask you this question: Did you on any occasion ride on any of the Customs aircraft?

A Reference this case, no, ma'am.

Q Yes. Reference to the -- to the Rasmark portion of the investigation?

A No, ma'am.

Q Okay. Did you ride on the Customs aircraft with reference to the larger money laundering investigation?

A No, ma'am.

Q Did you participate in the execution of the search warrant of November 22nd, 1993?

A Yes, ma'am.

Q Were you aware of -- or do you -- were you aware prior to November 22nd that that search was going to take place?

A Yes, ma'am.

Q Did you review the search warrant or the affidavit for the search warrant prior to the participating the execution of the search warrant?

A No, ma'am. I did not review the

affidavit. I received a call from Special Agent Frost and he told me what was in it. And I -- the part that involved myself. And he asked is this right, and I said, yes, that's --

Q I'm sorry. He asked you what?

A He was verifying information that I provided. And I advised him that it was correct information, yes.

Q What information did you provide him?

A Reference trash pickups and so forth.

Q Okay. And you verified to him that everything that he put in his affidavit was true as it pertains to your activities?

A Yes, ma'am.

Q Okay. Now, on the occasions that you performed surveillance of the -- of the Rasmusson residence on Leo Collins, did you see any construction work taking place on any of those occasions?

A Not that I can recall, no, ma'am.

Q Okay. Did you see any individuals going in and out of the house?

A No, ma'am.

Q Okay. And did you participate in the interview of Andrew A. Gantkessy on June

2nd, 1993?

A No, ma'am.

Q Okay. Now, you said you did participate in the execution of the search warrant; is that correct?

A Yes, ma'am.

Q What was your assignment in -- on that particular occasion?

A To assist Customs in retrieving the records of -- financial records and so forth.

Q Okay. And do you know whether any drugs or contraband was found in -- in that search -- did you participate in the Leo Collins?

A No, ma'am.

Q Or the business?

A At the business.

Q Okay. Do you know whether any drugs or contraband was found at the Rasmark Jet Charter, Inc. office?

A I'm not aware of any, no, ma'am.

Q Okay. Now, did you participate

with the financial task force on the occasion of May 23rd, 1992 when Officer George Salas brought Deborah Rasmusson to the Customs office.

A No, ma'am --

Q Okay. Now, were you -- are you aware of the date when the larger money laundering case was certified as an OCEDTF case?

A No, ma'am. I have no knowledge of

that.

Q Okay. Are you aware when the larger money laundering case was decertified?

A No, ma'am.

Q Okay. Now, when you stopped working the assignment on the Rasmark portion of this larger money laundering investigation, did the El Paso Police Department also stop their participation in the financial task force?

A No, ma'am. I -- when I -- when I left, the sheriff's department gave -- presented another person to replace me.

Q Okay. Who was that person?

A That was Detective Pete Escajeda

with the sheriff's department.

Q What's that last name again?

A Escajeda.

Q Do you know how to spell that?

A E-s-c-a-j-e-d-a, I believe.

Q Okay. And how long did he stay assigned to the financial task force?

A He's still assigned there for -- for all I know.

Q Okay. Now, during the time that you worked on the Rasmark portion of the larger money laundering investigation, did you receive frequent briefings on what was going on, what -- the focus of the case, where it was heading?

MR. CASTILLO: I'm going to object. That question has been asked and answered. This witness has already testified as to he did not receive extensive briefings,

but did get updates from Agent Schroeder.

Q (By Ms. Sheppard) Let me ask you this: Did you ever express any concerns about your participation in the Rasmark portion of

the investigation to Special Agent Schroeder?

A No, ma'am.

Q Did you ever express any kind of concern about your participation in the -- thank you -- in the Rasmark investigation to your immediate supervisor, Lieutenant Gabbert?

A I expressed some concern about the time involved, but --

Q Were you ever concerned about the lack of corroboration done pertaining to the Rasmark portion of the investigation?

A No, ma'am.

Q Were you ever concerned about the lack of any type of indictments coming out of any of the financial task force investigation pertaining to the Rasmark portion of the case?

A No, ma'am. I -- I never had. I never addressed that concern. Now, my -- my supervisor was asking me, you know, not my case.

Q Okay. What did your supervisor ask you?

A He just wanted to know when there were indictments expected and --

Q What did you tell him?

A I told him none are pending right

now.

Q That none are pending?

A None that to my knowledge were pending at the -- at the moment, no.

Q Do you recall about when this question was asked to you?

A Oh, it was probably -- it was in the -- I believe in the winter of '93. Probably November or December.

Q Okay. Now, what do you mean when you say you were concerned about the time factor?

A Well, you know, my -- my superiors in the sheriff's office normally do not do long-term investigations. And they were expressing their concern that nothing was happening very quickly on this, but -- on this particular case. And I was -- I was getting -- from my supervisor wanting to know

when they were going to do something. And there, again, I explained to him, you know, we're there to assist. It's not our case, you know, that -- you know, I can't tell when -- when the indictments were going down or

anything else because, you know, we're still -- we're assisting. We're not the ones doing the case.

Q Okay. Now, you -- well, during the time that you worked on this Rasmark portion of the case, did you feel that your investigative experience was being fully utilized?

MR. CASTILLO: I'm going to object to the -- to the question. That's outside the scope of what

the purpose of his investigation is intended for. And that's for purposes of determining qualified immunity.

Q (By Ms. Sheppard) Now, you stated -- your counsel stated you were cross-deputized as a Federal agent; is that correct?

A I was cross-designated as a Customs officer.

Q Customs officer?

A Yes, ma'am.

Q And did you take any kind of oath when you were cross-deputized as a Customs

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF TEXAS

EL PASO DIVISION

MARK B. RASMUSSON, *
ET AL *
*
VS. * CIVIL ACTION:
* EP-95-CA-475-F
LAWRENCE E. FROST, *
ET AL *

VIDEOTAPED DEPOSITION OF

GAIL BEECH

January 31, 1997

with Agent Frost on more than one occasion pertaining to Mark B. Rasmusson and his company?

A Yes.

Q Okay. Now, did you tell Agent Frost that much of the information that you were giving him were rumors that you have heard from other people?

A Yes.

Q Okay. Now, on the occasions that you had telephone conversations with Agent Frost, did he also ask you questions pertaining to Andrew Gantkessy?

A He may have. I -- I don't recall.

Q Okay. Did he ask you questions pertaining to Deborah Rasmusson?

A Yes.

Q Okay. Do you recall the nature of any of the questions that he asked you?

A I don't right now. I'm sorry.

Q Okay. Now, did Agent Frost or Agent Mills ever tell you that if you cooperated in their investigation, that Customs Service would seize the Rasmark assets?

A No.

Q Okay. Did Agent Frost ever make any comments to you in regard to if they were successful in their investigation, that they will eliminate Rasmark as a competitor?

A I don't remember that statement.

Q Okay. Was there ever any discussion with Agent Frost pertaining to the

results of -- the benefit to Arrow Freight if they were able to get information from you pertaining to Mark Rasmusson?

A No, there was not.

Q Okay. Now, was Rasmark one of your major competitors in March 1993?

MR. COLLINS: I'm going to object to the question. That doesn't have anything to with qualified immunity. That's directly part of your lawsuit against Ms. Beech herself. And I'm going to instruct her not to answer that question.

MS. SHEPPARD: It goes to the issue of credibility. Information --

MR. COLLINS: Whose credibility?

MS. SHEPPARD: Of the witness' credibility and reliability of the information.

MR. COLLINS: Well, but credibility is not one of the issues here. What is the issue here is qualified immunity.

MS. SHEPPARD: Well, the issue is whether the information given is reliable information.

MR. COLLINS: No.

MR. BAKER: No, ma'am. The question is if she -- what Agent

Frost wrote down in the ROIs is what she said. That's what the inquiry is.

MR. ROBINSON: And on behalf of the Federal defendants, that's the only issue in this case.

Q (By Ms. Sheppard) Let me ask you this question: During the course of this interview with Special Agent Frost and Eric

[End of Excerpts]

Supreme Court, U.S.
FILED

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No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

MARK B. RASMUSSON, et. al.,

Petitioners,

v.

LAWRENCE E. FROST, et. al.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

APPENDIX E
Respondents' Affidavits, Admissions and Investigation Reports

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APPENDIX E

RESPONDENTS' AFFIDAVITS, ADMISSIONS AND INVESTIGATION REPORTS

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[Paragraph numbers added to text]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

AFFIDAVIT

Lawrence E. Frost, being duly sworn, depose and state:

1. That I am a Special Agent employed by the United States Customs Service, Department of the Treasury and have been so employed for approximately five years.

2. That as a result of my training and experience as a special Agent with U.S. Customs, I know that records and other evidence of money laundering violations are subject to seizure as violations of Title 18 USC 1956 and Title 18 USC 1957. 1 know from my experience that persons engaged in money laundering violations customarily maintain records of their financial activities such as ledgers, bank account information, tax returns, money orders, wire transfer receipts, notebooks, and telephone and address books.

3. Deborah and Mark Rasmussen [sic]are the owners of Rasmark Jet Service Incorporated of El Paso, Texas. The United States Customs Service, Federal Bureau of Investigation and Internal Revenue service criminal Investigation Division are currently carrying out an investigation of Rasmark Jet service Incorporated and the Rasmussens based on evidence that the company is being utilized as part of a money laundering operation.

4. During March of 1992 1 was contacted by Sergeant George Salas of the El Paso Police Department. Sergeant Salas told me that he had been contacted by Deborah Rasmussen and that she had alleged that her husband, Mark Rasmussen, was attempting to kill her. Sergeant Salas stated that he understood that Deborah Rasmussen was of interest

to the customs Service and that he would provide any information she provided to me.

5. During April and May of 1992 1 received two additional telephone calls from Sergeant Salas. Sergeant Salas stated that Deborah Rasmussen continued to fear for her life and that she felt that the reason that she was in danger was her husband's criminal activity.

6. On May 23, 1992 1 was contacted by Sergeant Salas. Sergeant Salas stated that Deborah Rasmussen had decided that she wished to meet with federal agents to provide information relating to the criminal activities of Mark Rasmussen and associates.

7. I met with Sergeant Salas, Deborah Rasmussen and her fifteen year old son, ian, in El Paso, Texas. At the time of this meeting Sergeant Salas indicated a brown cardboard file box, bearing a handwritten notation, "2 of 18", which was carried by Deborah Rasmussen, Sergeant Salas stated that Deborah Rasmussen had brought brought [sic] evidentiary records with her to turn over to agents.

8. During several hours of conversation with Deborah Rasmussen she stated to me that Mark Rasmussen ships approximately one thousand pounds (1,000 pounds) of United States currency out of the United states twice a week on behalf of his criminal associates. She further stated that this currency is transported by aircraft belonging to Rasmark Jet Service. Deborah Rasmussen stated that this currency is not reported to the U.S. Customs Service as required by law. Deborah Rasmussen's son, Ian, stated that he had been telling his mother to got away from Mark Rasmussen for at least five years because Mark Rasmussen is a criminal.

9. During the course of the interview with Deborah Rasmussen she became uncooperative when she learned that all assets of Rasmark Jet Service may be subject to seizure and forfeiture by the U.S. Government. As Deborah Rasmussen left the U.S. Customs office in El Paso, Texas her son, Ian, stated to U.S. Customs Special Agents Fred Schroeder and Eric Mills that every thing that agents needed to convict Mark Rasmussen was in the box his mother carried.

10. A short time after Deborah Rasmussen and Ian had left the Customs Office Agents Mills and Schroeder told of the statement Ian had made. Agent Mills and I went to locate Deborah Rasmussen and ask her f or the contents of the box. Deborah Rasmussen and Ian were found at a service station on Viscount Boulevard, El Paso, Texas. I entered the station and asked Deborah Rasmussen to come outside and speak with me but she refused. I noticed at that time she did not have the box with her. After I had left the interior of the stations Ian, ran out the door on the opposite side of the station. I saw Ian go around a nearby rock wall and retrieve the box from a clump of bushes. Ian then returned to the station and gave the box to his mother, she sat the box on the f loor in the station. Based on the statement of Sergeant Salas that the box contained evidence, Ian's statement that the box contained evidence, and the fact that Deborah Rasmussen or Ian had hidden the box I decided to seize the box and the contents thereof.

11. I again entered the station and explained to Deborah Rasmussen that I believed that the box contained evidence of criminal activity and that I was going to seize the box and the contents. Over the objections of Rasmussen I seized the box and contents.

12. Special Agent Mills and I returned to the El Paso Customs Of f ice where we sealed the box and placed it in a locked office for safekeeping.

13. At approximately 3:45 a.m. on May 24, 1992 1 was contacted by Deborah Rasmussen via telephone. Rasmussen apologized for being uncooperative and told me that the box contained all the evidence that would be needed to convict Mark Rasmussen of many crimes. she further stated that she had been uncooperative because the contents of the box can also be used as evidence against her.

14. Based on the foregoing,, I believe that there is probable cause to believe that the brown cardboard file box which is marked, “2

of 18" contains evidence of violations of Title 18 USC 1956 and 18 USC 1957.

/s/ Lawrence E. Frost, Special Agent
United States Customs Service

Subscribed and sworn to before me this 26 day of May, 1992.

/s/ Janet Reusch
United States Magistrate Judge

[Paragraph numbers added to text and emphasis in original]

FROST'S AFFIDAVIT

1. Lawrence E. Frost, being duly sworn, depose and state:

That I am a Special Agent employed by the United States Customs Service, Department of the Treasury and have been so employed for approximately six years.

2. That in my duties as a Special Agent with the United States Customs Service I am assigned primarily to the investigation of cases involving money laundering and conspiracies related to money laundering and related controlled substance trafficking. As a result of my experience investigating money laundering and controlled substance trafficking I am frequently assigned to provide training to other federal agents as well as state and local police officers on money laundering related issues.

3. That as a result of my training and experience as a Special Agent with U. S. Customs, I know that records and other evidence of money laundering violations are subject to seizure as evidence of violations of Title 18 USC 1956 and Title 1957. I know from my experience that persons engaged in money laundering and controlled substance trafficking violations customarily maintain records of their financial activities such as ledgers, Bank account information, tax returns, money orders, wire transfer receipts, notebooks, and telephone and address books. I also know that persons who are engaged in money laundering frequently utilize computers and other electronic media to collect and store records relating to their illicit financial activities.

4. That as a result of my training an experience I know that persons engaged in money laundering activities frequently violate the provisions of the Bank Secrecy Act to wit: Title 31 United States Code section 5314, and 5316. These violations of the Bank Secrecy Act involve maintaining un-reported Bank accounts in foreign countries,

structuring of transactions in domestic financial institutions in order to avoid Cash Transaction Reports for large currency movements and the smuggling of bulk U.S. and foreign Currency and monetary instruments in order to avoid the filing of Cash and Monetary Instrument Reports with U.S. Customs. These violations are committed by persons engaged in money laundering in order to avoid detection of their currency movement through routine inspection of Bank records and financial data bases maintained by various U.S. Government agencies.

5. That as a result of my experience and training as a Special Agent I know that persons engaged in money laundering and related controlled substance violations typically maintain businesses which are utilized as "fronts" to explain income derived from their criminal activities. I also know that persons engaged in money laundering activities maintain accounts in foreign Banks in order to facilitate unreported and untraceable currency movements. These foreign accounts are utilized as an alternative to accounts in the United States Banks which are subject to the provisions of the Bank Secrecy Act.

6. Debra and Mark RASMUSSON are the owners of RASMARK Jet Charter Incorporated of El Paso, Texas The United States Customs Service, Federal Bureau of Investigation, Internal Revenue Service Criminal Investigation Division, United States Secret Service, El Paso Police Department and El Paso County Sheriff's Department are currently carrying out an investigation of RASMARK Jet Charter Incorporated and the RASMUSSONs. This investigation is predicated on evidence that the company is being utilized as part of a money laundering conspiracy.

7. In 1991 Mark RASMUSSON was indicted and brought to trial in the United States District Court for the Western District of Texas on charges of Aiding and Abetting the Jesus FLORES controlled substance distribution organization. The allegations against Mark RASMUSSON related to allegations that he (Mark RASMUSSON) had utilized his aircraft to transport Colombian citizens who were engaged in smuggling cocaine. The persons that RASMUSSON was alleged to have transported were allegedly engaged in transporting cocaine from Colombia to Mexico then on to the United States where the cocaine was

distributed by the FLORES Organization. At trial in the United States District Court for the Western District of Texas Mark RASMUSSON was found not guilty on the charges of Aiding and Abetting the Jesus FLORES organization.

8. The investigation of Mark RASMUSSON and RASMARK Jet Charter was conducted during 1990 and 1991 by a task force led by the United States Drug Enforcement Administration (DEA). The portion of this investigation which related to Mark RASMUSSON and RASMARK was predicated on facts which indicated that Mark and Debra RASMUSSON had provided transportation of controlled substances, currency and people in their aircraft in furtherance of the controlled substance conspiracy carried out by the Jesus FLORES Organization.

9. I have reviewed all reports from the DEA and the trial transcripts which relate to the prior case in which Mark RASMUSSON was indicted. This document review was carried out in an effort to assist me in determining whether Mark and Debra RASMUSSON and their associates were engaged in money laundering and other currency violations as far back as 1989. Through this document review I have discovered the following facts:

10. I have reviewed a written DEA Report of Investigation signed by Special Agent Steven Perkins, this report contains the statements reportedly made by Debra RASMUSSON to Special Agent Perkins on August 23, 1990. Special Agent Perksins asked Debra RASMUSSON if she knew that Jesus FLORES, who was at that time the subject of the DEA investigation, was a controlled substance trafficker, Debra RASMUSSON reportedly stated that she thought FLORES was a "hit man" because they (RASMARK Jet Charter) flew him (FLORES) "all over the country", he always paid in cash and he seldom took luggage with him.Debra RASMUSSON reportedly continued by saying that RASMARK Jet Charter never transported freight for FLORES and she again stated that he always paid in cash and usually in $50.00denominations. Debra RASMUSSON reportedly stated that FLORES had paid her in cash for flights and on occasion Joe PEAKE, a close associate of FLORES, would pay Debra RASMUSSON

in cash for flights Chartered by FLORES. When asked about records for flights Chartered by FLORES, Debra RASMUSSON stated that she kept those records at her home and not at the office of RASMARK Jet Charter. Debra RASMUSSON stated that she had the original invoices, manifests and billing sheets for FLORES at her home. Debra RASMUSSON, later in the interview, stated again that she would give the DEA Special Agents all original documents and Bank deposit slips for the cash received from FLORES.

11. I have obtained and reviewed a copy of a Drug Enforcement Administration (DEA) Administrative Subpoena issued to RASMARK Jet Charter and served by DEA Special Agent Steven Perkins on August 24, 1990. This subpoena required RASMARK Jet Charter to furnish all account documents and related records regarding Jesus FLORES and VISTA REMODELING to the DEA for use in the DEA investigation of FLORES.

12. Attached to the mentioned DEA subpoena is a copy of a letter on RASMARK Jet Charter letterhead. This letter is dated August 28, 1990. This letter states that Debra RASMUSSON as custodian of records for RASMARK Jet Charter was unable to locate any records relating to Jesus FLORES or VISTA REMODELING due to the loss of the office client file. Attached to this letter are four sets of documents bearing markings which indicate that these documents are reconstructions of RASMARK invoices, flight logs and manifests which were purported to be representations of all RASMARK business activity with FLORES. These reconstructed invoices are dated August 28, 1990.

13. I have reviewed a written DEA Report of Investigation signed by DEA Special Agent Steven Perkins. This report provides details of an interview of a person who is identified only as the RASMARK Jet Charter Office Manager. This interview occurred on August 29, 1990 and the person interviewed stated that she was the office manager at that time. The Office Manager reportedly told Special Agent Perkins that she had never heard Debra RASMUSSON speak of a missing client folder nor had she ever seen nor heard of a client file in the names of Jesus FLORES nor VISTA REMODELING.

The office Manager reportedly stated that she did all of the invoicing at RASMARK Jet Charter, and that after she prepared the three part invoice one copy would be sent to the customer, one copy would go into the client file and one copy was taken home by Debra RASMUSSON and maintained in a separate filing system at the RASMUSSON residence. As the interview with the office Manager continued, there was reportedly a second reference made by the Office Manager to the fact that Debra RASMUSSON maintained a set of business files in her (Debra RASMUSSON's) residence.

14. In a continuation of the same DEA Report of Investigation Special Agent Perkins reported that he had also interviewed Deborah RASMUSSON on August 29, 1990 at which time Debra RASMUSSON gave Special Agent Perkins the previously mentioned reconstructed invoices. During this interview Debra RASMUSSON reportedly told Special Agent Perkins that Jesus FLORES was nothing special to RASMARK Jet Charter. When Special Agent Perkins specifically questioned Debra RASMUSSON as to whether she had other customers who Chartered numerous passengers flights and paid in cash, Debra RASMUSSON responded in the negative.

15. A further review of the invoices and manifests given to the DEA by Debra RASMUSSON as well as the analysis of these records contained in a written report by Special Agent Perkins revealed a patterned of two payments of $8,000.00 each to RASMARK Jet Charter one payment occurring on June 9, 1990 and one on June 10, 1990. These payments total $16,000.00. I know through my experience that invoicing amounts in excess of $10,000.00 on two or more separate invoices dated on consecutive dates is frequently a form of structuring transactions to avoid the reporting requirements contained in Title 26 United States Code section 6050I..

16. I have reviewed a DEA Report of Investigation which details another interview with Debra RASMUSSON on August 23, 1990. This Report of Investigation is signed by Special Agent Steven Perkins. During the course of this interview, Debra RASMUSSON reportedly stated that she had checked at her residence for the records requested by the DEA and had found only pilot duty time sheets for two

Charters by Jesus FLORES.

17. I have reviewed a DEA Report of Investigation written by Special Agent Steven Perkins. This Report of Investigation details an interview with Susana ZALDIVAR on August 27, 1990. Susana ZALDIVAR reportedly stated that she was the Office Manager at RASMARK Jet Charter for approximately two and one half months ending on approximately July 21, 1990. Susana ZALDIVAR stated that in her capacity as Office Manager she was responsible for all invoicing, billing and maintaining all client files. Susana ZALDIVAR reportedly stated that she never did an invoice for Jesus FLORES nor VISTA REMODELING. Susana ZALDIVAR stated there was never a client file for Jesus FLORES nor VISTA REMODELING at the office of RASMARK Jet Charter. Susana ZALDIVAR reportedly stated that she had been told by the RASMUSSONS that FLORES was a special account and that they (RASMUSSONS) would handle all billings for FLORES. Susana ZALDIVAR stated that she was told by Debra and Mark RASMUSSON that if FLORES called RASMARK Jet Charter and wished to Charter a flight and the RASMUSSONs were not available that FLORES was to be taken where he wished to go and Mark or Debra RASMUSSON would handle billing themselves upon their return. Susana ZALDIVAR reportedly told Special Agent Perkins that FLORES had only Chartered flights on two or three occasions and that FLORES was a cash customer.

18. I have reviewed a DEA Report of Investigation relating to an interview of Jerry BURNETT, who was at the time of the interview and remains as of this writing the chief pilot (BURNETT has been the chief pilot since at least mid 1989 although he has been fired and re-hired several times) of RASMARK Jet Charter. This interview reportedly occurred on August 26, 1990. During the course of this interview Jerry BURNETT reportedly stated that he had been the pilot on at least three flights Chartered by Jesus FLORES into Mexico. Jerry BURNETT reportedly stated that on one of these flights he had picked up additional passengers in Mexico and that these people were armed with rifles and semi-automatic handguns. Jerry BURNETT stated that he believed that the passengers were Mexican law enforcement officers. Jerry BURNETT reportedly stated that upon his return to El Paso,

Texas he went to Mark and Debra RASMUSSON and reported the unusual events of his flight into Mexico with FLORES. Mark and Debra RASMUSSON and Jerry BURNETT concluded that "FLORES was in the illegal drug business". BURNETT reportedly told Special Agent Perkins that during July, 1990 he had several conversations with the RASMUSSONs regarding FLORES and "his people" being in the drug business and that both Mark and Debra RASMUSSON told him (BURNETT) that they knew that FLORES was in the drug business.

19. I have reviewed the transcripts of the testimony of Jerry BURNETT in the trial of Jesus FLORES et al in the U.S. District Court for the Western District of Texas. During the direct examination of Jerry BURNETT, he (BURNETT) denied that he ever stated to Mark RASMUSSON that Jesus FLORES was involved in illegal activities. Jerry BURNETT further denied that Mark RASMUSSON had ever remarked to him (BURNETT) that Jesus FLORES was engaged in any illegal activity. In further review of the transcript of Jerry BURNETT's testimony on cross examination he again denied that he ever discussed any allegations of criminal activity involving Jesus FLORES with Mark RASMUSSON.

20. During the course of the previously mentioned interview of Jerry BURNETT, Jerry BURNETT reportedly told Special Agent Perkins that Mark and Debra RASMUSSON were not being truthful with the investigating agents. Jerry BURNETT stated that the RASMUSSONs lack of honesty was caused by their desire to conceal the extent of their cash transactions with FLORES which they were attempting to conceal from the Internal Revenue Service. Jerry BURNETT also stated that the RASMUSSONs were concealing the Charters for FLORES and that the RASMUSSONs kept no records of flights Chartered by FLORES and that they did not report FLORES' cash payments to the Internal revenue Service. Jerry BURNETT estimated that the cash payments to the RASMUSSONs by Jesus FLORES were in excess of $50,000.00.

21. I have reviewed a written DEA Report of Investigation signed by Special Agent Steven Perkins. This report relates to the service of a DEA Administrative Subpoena on the accounting firm of

APODACA and Jensen for all financial information relating to RASMARK Jet Charter and Mark and Debra RASMUSSON and a related interview of Albert APODACA and Keven Jensen which occurred on August 28, 1990. During the course of this interview Mr. APODACA and Mr. Jensen told Special Agent Perkins that on the afternoon of August 27, 1990 Mark RASMUSSON came to the office of APODACA and Jensen and stated that he wished to amend his May, 1990 financial report to include an $11,000.00 cash transaction. The financial report referenced by Mr. APODACA is not a required U.S. Government report, rather this is an internal RASMARK Jet Charter report compiled by APODACA and JENSEN at the request of the RASMUSSONs. When Mark RASMUSSON was advised that the May, 1990 financial report could be amended but that the amended report would have to be attached to the original report along with a statement to explain the correction, Mark RASMUSSON asked if he should re-construct invoices to match the amounts of which government agents were aware. Mr. APODACA and Mr. Jensen advised Mark RASMUSSON to report all transactions accurately and correctly. Mr. APODACA and Mr. Jensen stated that after they provided this advise to Mark RASMUSSON, Mark RASMUSSON stated that to protect themselves, they should not release any information about RASMARK Jet Charter to anyone without a subpoena or court order. Mr. APODACA and Jensen reportedly told Special Agent Perkins that these statements by Mark RASMUSSON alarmed them and led them to feel that there were possible problems associated with the RASMARK Jet Charter account. Mr. APODACA also told Special Agent Perkins that in an annual financial review of RASMARK Jet Charter which is signed by both Mark and Debra RASMUSSON they (RASMUSSONs) reported that they accepted no cash, all payments were made by either check or credit card. The financial review mentioned by Mr. APODACA is not a report required by the U.S. Government, rather it is an in-house report on the financial activity of RASMARK Jet Charter for the preceding year. Mr. APODACA stated that if the RASMUSSONs had received any cash payments, these payments should have been reported to him. Mr. APODACA stated that he was relatively familiar with the major accounts of RASMARK Jet Charter and that he had never heard of Jesus FLORES nor VISTA REMODELING.

22. Included in the Report of Investigation mentioned in the above paragraph is an analysis of the financial records obtained by Special Agent Perkins from APODACA and Jensen and Company. According to the analysis by Special Agent Perkins there are no records of any cash payments nor cash Bank deposits.

23. My review of the transcript from the trial of Jesus FLORES et al, in which Mark RASMUSSON was a defendant has revealed that a large volume of information regarding the requirements for reporting cash transactions in excess of $10,000.00 were discussed.

24. I have obtained a copy of a document which is marked as Government Exhibit 125 from the trial of Jesus FLORES et al. This document is from the files of APODACA and Jensen and Comapny. The document is dated April 10, 1990. The document states that RASMARK Jet Charter does not accept cash and that RASMARK Jet Charter aircraft are not used for personal use with the exception of a Cessna Model 210 which is for personal use ten per cent of the time. This document bears the initials "MR".

25. I have received a written report from Federal Bureau of Investigation (FBI) Special Agent Joe Acosta. This report is dated June 7, 1993. This report details an interview conducted with an individual who is referred to as a reliable confidential informant. I have been told by Special Agent Acosta that the confidential informant who provided the information contained in this report had close ties to and was criminally involved with the high ranking members of the Jesus FLORES controlled substance trafficking organization during the years that FLORES was active.

26. The FBI confidential source stated that Jesus FLORES and Arturo BERMUDEZ were introduced to Mark RASMUSSON by Pete SEAVERNS in 1988. The FBI source stated that Mark RASMUSSON became involved in money laundering with FLORES. The FBI source further stated that Mark RASMUSSON was buying aircraft parts with the proceeds of trafficking in controlled substances. The FBI source also stated that Jesus FLORES was involved in money laundering with an individual named Hector Saenz. Hector Saenz is a

major money laundering suspect currently under investigation by U.S. Customs.

27. The FBI source stated that Hector Saenz worked with Mark RASMUSSON and Ricardo Valdez in their money laundering activities. The source stated that he/she had personnel knowledge that in the past Mark RASMUSSON would travel throughout the United States in his aircraft and collect proceeds of trafficking in controlled substances and then deliver the proceeds to the interior of the Republic of Mexico.

28. All persons who import to or export from the United States currency or monetary instruments in excess of $10,000.00 are required to file a Cash or Monetary Instrument Report (CMIR) with U.S. Customs. This report is a requirement of Title 31 United States Code section 5316 and 31 CFR 103.23. All of these reports are recorded in the U.S. Treasury Department Financial Data Base. I have reviewed all Cash and Monetary Instrument Reports filed with United States Customs in the name of Mark or Debra RASMUSSON or RASMARK Jet Charter, there is only one such filing on February 15, 1991 in which Debra RASMUSSON attempted to import $10,000.00 through the Ysleta, Texas Port of Entry without reporting the currency. When the currency was discovered by Customs Inspectors, Debra RASMUSSON filed the required report.

29. The FBI source stated that Mark RASMUSSON received approximately $500,000.00 in controlled substance proceeds from Jesus FLORES during 1989 and 1990. The majority of the money Mark RASMUSSON received from FLORES was used to purchase aircraft parts, aircraft engines and pay expenses incurred during his (Mark RASMUSSON's) money laundering activities. Any person who engages in a financial transaction involving funds which were derived from the commission of trafficking in controlled substances has committed a violation of Title 18 United States Code section 1957.

30. On November 3, 1993 I received a written report from FBI Special Agent Joe Acosta. This report provided information from an FBI confidential source this source is referred to in this report as

FBI-1.

31. According to the FBI report FBI-1 stated that during December, 1991 he/she was inside of the RASMUSSON residence at 11157 Leo Collins Dr. El Paso, Texas. On this occasion FBI-1 saw a large suitcase in Debra RASMUSSON's bedroom closet. Inside of the suitcase FBI-1 reported that he/she saw what appeared to be controlled substances and U.S. currency. FBI-1 reported that the contents of the suitcase were clear plastic bags containing a white powder substance and other packages wrapped in tin foil. FBI-1 further reported that the currency in the suitcase was of various denominations.

32. FBI-1 also reported that during February, 1992 he/she had seen three or four storage type boxes underneath Debra RASMUSSON's bed and in Debra RASMUSSON's closet. FBI-1 reported seeing business records from RASMARK Jet Charter including fuel bills and statements and flight planning forms. One of the boxes contained 20 to 30 Bank statements. The Bank statements were from Bank in Colorado, Alaska, Cabo San Lucas, Mexico, New York and the Cayman Island.

33. I know from my experience investigating money laundering cases that persons involved in unlawful currency manipulation and violations involving structuring transactions to avoid the Bank Secrecy Act reporting requirements frequently maintain several Bank accounts in different geographic areas often foreign Bank accounts. I also know that persons engaged in money laundering frequently stockpile currency in their homes and/or businesses prior to placing the money in foreign or domestic circulation which commences the laundering process. I also know that the Cayman Is lands is a "financial haven" due to the intense secrecy involving financial transactions and the lack of currency transaction reporting laws.

34. Under the provisions of Title 31 United States Code section 5314 and Title 31 Code of Federal Regulations section 103.24 all residents and citizens of the United States or a person doing business in the United States who maintain foreign Bank accounts must report the existence of these accounts to the U.S. Department of the Treasury.

The U.S. Department of the Treasury Financial Data Base contains no Foreign Bank Account Reports in the names of Mark nor Debra RASMUSSON nor RASMARK Jet Charter for the years of 1988, 1989, 1990, 1991, 1992 nor 1993 as of November 1, 1993.

35. During March of 1992 I was contacted by Officer George Salas of the El Paso Police Department. Officer Salas told me that he had been contacted by Debra RASMUSSON and that she had alleged that her husband, Mark RASMUSSON, was attempting to kill her. Officer Salas stated that he understood that Debra RASMUSSON was of interest to the Customs Service and that he would provide any information she provided to him.

36. On May 23, 1992 I was contacted by Officer Salas. Officer Salas stated that Debra RASMUSSON had decided that she wished to meet with federal agents to provide information relating to the criminal activities of Mark RASMUSSON and associates.

37. I met with Officer Salas, Debra RASMUSSON and her fifteen year old son, Ian MAYE, in El Paso, Texas. At the time of this meeting Officer Salas pointed to a brown cardboard file box, bearing a handwritten notation, "2 of 18", which was brought and carried by Debra RASMUSSON, Officer Salas stated that Debra RASMUSSON had brought evidentiary records which Debra RASMUSSON wished to turn over to the agents.

38. During several hours of conversation with Debra RASMUSSON she stated to me that Mark RASMUSSON ships approximately one thousand pounds (1,000 pounds) of United States currency out of the United States twice a week on behalf of his criminal associates. She further stated that this currency is transported by aircraft belonging to RASMARK Jet Charter. Debra RASMUSSON stated that this currency is not reported to the U.S. Customs Service as required by law. Debra RASMUSSON's son, Ian MAYE, stated that he had been telling his mother to get away from Mark RASMUSSON for at least five years because Mark RASMUSSON is a criminal.

39. Transportation of currency derived from a Specified

Unlawful Activity from the United States to a place outside of the United States to promote the carrying on of the Specified Unlawful Activity is a violation of Title 18 United States Code section 1956(a)(2)(A) and transportation of currency derived from specified Unlawful Activities to avoid the reporting requirements of Title 31 United States Code section 5314 is a violation of Title 18 United States Code section 1956(a)(2)(B)(ii).

40. During the course of the interview with Debra RASMUSSON she became uncooperative when she learned that all assets of RASMARK Jet Charter may be subject to seizure and forfeiture by the U.S. Government. As Debra RASMUSSON left the U.S. Customs Office in El Paso, Texas her son, Ian MAYE, stated to U.S. Customs Special Agents Fred Schroeder and Eric Mills that everything that the agents needed to convict Mark RASMUSSON was in the box his mother carried.

41. Based on the statement of Officer Salas that the box contained evidence and Ian MAYE's statement that the box contained evidence, I believed that the box contained evidence of criminal activity I seized the box and the contents.

42. On May 26, 1992 I prepared an affidavit and application for a search warrant for the box which had been seized from Debra RASMUSSON. The affidavit and application for search warrant were reviewed and approved by Assistant United States Attorney Sam Ponder.

43. At 4:00 p.m. on May 26, 1992 a search warrant was issued by the Honorable Janet Ruesch, United States Magistrate Judge for the Western District of Texas.

44. On May 27, 1992 at approximately 9:00 a.m. I opened the box of records which had been seized from Debra RASMUSSON. The search and inventory of the box was made by me and witnessed by Special Agent Joe Acosta of the Federal Bureau of Investigation and Special Agent Fonda HIVICK of the Internal Revenue Service Criminal Investigation Division. The box contained a mixture of business records

from RASMARK Jet Charter, including numerous tax records. The box also contained records relating to the personal finances of Mark and Debra RASMUSSON. The contents of the box upon analysis indicted that the RASMUSSONs are engaged in tax evasion.

45. On September 16, 1992 Special Agent Mills reported via written report that he observed a red Mercedes 560SL bearing Arizona license HSR 995 arrive at RASMARK Jet Charter at approximately 12:15 p.m. The vehicle was occupied by two hispanic males, both of whom entered the business. The two males left the building and departed in the vehicle after a short time. A check of this vehicle license plate through the Treasury Enforcement Communication System revealed that the vehicle was subject of a suspect record alleging controlled substance smuggling by Special Agent Pamela Harrington of the U.S. Customs Office of Enforcement, Riverside, California. Special Agent Mills contacted Special Agent Harrington regarding this vehicle. Special Agent Harrington told Special Agent Mills that the Mercedes automobile was owned by Hector BARRERA of Corona, California. Special Agent Harrington stated that BARRERA was a suspect in a controlled substance smuggling investigation in which over seven tons of cocaine had been seized as of the date of his inquiry, September 16, 1992.

46. I have since been advised by Special Agent Harrington that during February, 1993 800 pounds of marijuana was found by U.S. Customs Special Agents in BARRERA's residence near Riverside, California. BARRERA is now a fugitive.

47. On November 10, 1992 at approximately 9:10 P.M. United States Customs Inspectors at the Ysleta Port of Entry, El Paso, Texas carried out an intensive inspection of a 1989 Mercedes automobile driven into the United States from the Republic of Mexico by Debra RASMUSSON. The vehicle was found to contain .1 grams of marijuana. Debra RASMUSSON was found to be in possession of a switchblade knife. The vehicle was seized under U.S. Customs zero tolerance guidelines. Debra RASMUSSON was arrested by the El Paso Police for possession of unlawful weapon.

48. At approximately 9:30 p.m. on November 10, 1992 I was notified that Debra RASMUSSON was being detained at the Ysleta, Texas Port of Entry. Special Agent Eric Mills and I responded to the Port of Entry.

49. I attempted to interview Debra RASMUSSON. Debra RASMUSSON refused to acknowledge that she was being spoken to.

50. I conducted an inventory search of the seized Mercedes automobile which had been driven by Debra RASMUSSON from Mexico into the United States. In the vehicle I found two documents from BANAMEX. One of these documents is a deposit receipt dated November 10, 1992 to account 738165-3 in the name of Mark B. RASMUSSON, the deposit is in the amount of "7,803,096" the receipt does not indicate if this amount is dollars or pesos. The second document is entitled, "Liquidacion de Documentos" this document is also in the name of Mark B. RASMUSSON and shows an account number of 738165-3. This document is dated November 10, 1992 and shows an amount of "33,304" paid in cash. The term Liquidacion De Documentos indicates that checks or other instruments were exchanged for cash.

51. Under the provisions of Title 31 United States Code section 5314 and 31 CFR 103.24 all residents and citizens of the United States or a person doing business in the United States who maintain foreign Bank accounts must report the existence of these accounts and/or transactions to the U.S. Department of the Treasury. The U.S. Department of the Treasury Financial Data Base contains no Foreign Bank Account reports in the names of Mark nor Debra RASMUSSON nor RASMARK Jet Charter for the years 1988, 1989, 1990, 1991, 1992 nor 1993 as of November 1, 1993.

52. On February 12, 1993, Senior Special Agent Fred Schroeder, El Paso Police Senior Detective James Holland and Customs Auditor Hector BARRERA interviewed Arturo VARGAS at the U.S. Customs Office of Enforcement, El Paso, Texas. Mr. VARGAS stated that he was hired by Debra RASMUSSON in May of 1992 as an on site (in House) accountant for a yearly salary of $30,000.00. VARGAS

stated that he left RASMARK in July 1992. VARGAS stated that the books for RASMARK were being done by Debra RASMUSSON and the tax work was being handled by Albert APODACA of the accounting firm of APODACA and Jensen, 800 East Wyoming, El Paso,Texas. Mr. VARGAS first began to clean up the internal accounts and book work for the company. During this work with the RASMARK Jet Charter books, Mr. VARGAS stated that he found that RASMARK Jet Charter was making out double invoices, with the amounts on the invoice or the description of money due RASMARK and/or amounts of cargo carried on the invoice or the description of the cargo carried slightly altered. In some cases the number of the invoice was the same, however the amount due RASMARK Jet Charter or the cargo description was changed. When this work was done and he requested access to the Bank records for the accounts at EL PASO STATE BANK, BANK of the WEST and the MERRILL LYNCH trust account, Debra RASMUSSON became very suspicious of Mr. VARGAS to the point of accusing him of being an FBI agent stating that he knew to much about how the business worked.

53. Mr. VARGAS stated that the RASMUSSONs took in a lot of cash, however he never saw over $10,000.00 at one time. Mr. VARGAS stated that on several occasions he was told by Mark or Debra RASMUSSON to make out a cash receipt, however he never saw the cash that corresponded with the receipt.

54. Mr. VARGAS stated that Mark RASMUSSON was fairly good with computers and that records were being kept on computers within the company. The computers were connected by a network, however both Debra and Mark RASMUSSON kept other records stored on computers located in their offices. These records were not accessible though the network.

55. Mr. VARGAS further stated that the RASMUSSON's helped David CHAVEZ start the company Next Flight, however he did not have any further information about the company.

56. Mr. VARGAS stated that after leaving RASMARK he worked for APODACA and Jensen. Albert APODACA told Mr.

VARGAS that Debra RASMUSSON admitted not paying taxes on $100,000.00 of income in 1990 or 1991.

57. On March 1, 1993, Officer Clifford Gongaware provided the following statement to El Paso Police Senior Detective James Holland in regards to activities around RASMARK Jet Charter:

58. On July 13, 1992 Officer Gongaware was working the 11:00 p.m. to 7:00 a.m. shift at the El Paso International Airport. Officer Gongaware stated that at 1:25 AM he was sent to Gate 62 (T-hangar area) because a vehicle was blocking the gate. When he arrived at the gate Officer Gongaware stated that he found a large yellow truck with Chihuahua plates stopped at the gate. Officer Gongaware further stated that the truck was occupied by Sergio Roman (driver), DOB: 03-10-61 AND Adrian M. Varela, dob: 10-7-64. The two men told Officer Gongaware they needed in the gate to deliver some seat belts to RASMARK Jet Charter.

60. Officer Gongaware stated that while he was checking on the two men, a vehicle arrived from inside of the airport gate. Officer Gongaware stated that the vehicle had come from the area of RASMARK Jet Charter. The vehicle contained two white males. Officer Gongaware stated that a blond male exited the vehicle and verified the truck drivers store. The blond male stated he was from RASMARK Jet Charter. It was further explained to Officer Gongaware, that the seat belts were for Ford Motor Company and needed to be flown immediately to Detroit. Officer Gongaware stated that he was shown paperwork on the seat belts and being satisfied at this point he allowed the to enter.

61. Officer Gongaware stated that he felt further investigation was needed and drove near some hangers with this lights out and surveilled the RASMARK Jet Charter building. He watched the loading of a Lear Jet and noticed a male subject stationed away from the plane, facing north towards the airport and another male positioned to face south towards Boeing St.

62. Officer Gongaware stated that he took no action, but later

reported the matter to Lt. Dave Hamrick, his Division Commander. Lt. Hamrick advised him the business was under investigation and to stay clear of the area. Officer Gongaware did note the incident with the truck at the gate, on his log sheet and a copy has been obtained.

63. On March 1, 1993, Officer Andrew DeAngelo provided the following statement to Detective Holland:

64. Officer DeAngelo stated that about 6 months ago (A check of Officer DeAngelo's log sheets indicate the date to be July 24, 1992. This would be approximately 2-weeks after the incident described by Officer Gongaware.), he was working the 11:00 p.m. to 7:00 a.m. shift at the El Paso International Airport. Officer DeAngelo stated that he stopped his patrol car by the airport perimeter fence at about 3:00AM. Officer DeAngelo was watching a person walking around in the parking lot of the Marriott Hotel, 1600 Airway Boulevard, El Paso, Texas. Officer DeAngelo stated that he noticed several people apparently loading one of the Lear Jets at RASMARK Jet Charter. Officer DeAngelo stated that he then noticed that there was a guard, armed with a rifle, posted to watch north towards the main airport area and another guard with a rifle posted to watch south towards Boeing St. Officer DeAngelo stated that he watched the activity for about 15 minutes. Officer DeAngelo stated that he then observed all of the persons go into the RASMARK Jet Charter building. Officer DeAngelo then went and reported the matter to Officer Clifford Gongaware. Officer Gongaware advised him to stay clear of the business as it was under investigation.

65. I know that guards are not generally required to transport automotive parts.

66. On March 9, 1993 Debra RASMUSSON filed for divorce from Mark RASMUSSON in the District Court of El Paso County, Texas.

67. On March 9, 1993 Special Agent Eric Mills and I conducted an interview with Gail BEECH [sic], owner of AERO FREIGHT of El Paso, Texas. Gail BEECH is known to have had a business relationship with Mark and Debra RASMUSSON. Gail

BEECH stated that she first met Mark RASMUSSON during 1986. Gail BEECH stated that at time Mark RASMUSSON was residing in Kenosha, Wisconsin and that Gail BEECH had sub-contracted Charter flights Mark RASMUSSON. Gail BEECH stated that during her initial contract with Mark RASMUSSON he told her that he had purchased his aircraft with money he had inherited from his grandfather who was the inventor of the popsicle stick.

68. Gail BEECH stated that the FORD FAVESA contract was administrated in the El Paso/Juarez area by Joe SUDOMIR and Andy GANTKESSY. Gail BEECH stated that the RASMUSSONs were engaged in a "kick back" scheme with Joe SUDOMIR and are currently engaged in such a scheme with Andy GANTKESSY.

69. Gail BEECH stated that she was told by a former RASMARK pilot, Mark McAllister, that Mark RASMUSSON stated, while under the influence of alcohol, that he (RASMUSSON) keeps large amounts of money in Bank(s) in the Cayman Islands.

70. Gail BEECH stated that her salary from her air freight company has never exceeded $38,000.00 in one year. Gail BEECH stated that although Charter and air freight rates can be very high the actual operator profit after all expenses is approximately 10 to 12 percent of operator income.

71. During the course of this interview BEECH recommended that I interview Steve THORN of Taos, New Mexico Gail BEECH stated that Steve THORN is the brother of one of her (BEECH 's) business partners and that Mr. THORN had information on Mark RASMUSSON and an associate.

72. On March 15, 1993 I contacted Steve THORN via telephone. I conducted an interview of Mr. THORN regarding Mr. THORN's knowledge of Mark RASMUSSON et al.

73. Mr. THORN stated that he and his wife were at a wedding reception at the Holiday Inn in Taos, New Mexico during October, 1992. During the course of this event, Mr. THORN met a male subject

named Don or Ron JOHNSON (per THORN's recollection). Mr. THORN described this person as a white male, approximately five feet ten inches tall, thin, balding but wearing a pony tail, a large nose and wearing glasses. Mr. THORN stated that at the time of this contact, "JOHNSON" appeared to be under the influence of alcohol.

74. Mr. THORN stated that he told "JOHNSON" that members of his (THORN's) family had invested in an air freight company (AERO FREIGHT INC) in the El Paso area after "JOHNSON" had mentioned being associated with RASMARK AIR Charter. Mr. THORN stated that "JOHNSON" was obnoxious and stated that RASMARK was going to run all other air Charters in El Paso out of business.

75. "JOHNSON" continued that he and Mark RASMUSSON were flying controlled substances and drug money "all over the place" and that DEA is aware of their activities but can't catch them. "JOHNSON repeated that "DEA will never catch us" (reference "JOHNSON" and RASMUSSON) 3 or 4 times during the course of the conversation with Mr. THORN.

76. Mr. THORN stated that "JOHNSON" spoke and behaved as though he were a major part of the RASMARK company and as though he was big in "the Organization".

77. Based on Mr. THORN's description of "JOHNSON" I believe this person to be RASMUSSON associate Donald Mitchell JOSEPH. Donald JOSEPH is listed by RASMARK as an employee of RASMARK Jet Charter and is authorized El Paso Airport identification and ramp privileges as an employee of RASMARK. Donald JOSEPH has been observed accompanying Debra RASMUSSON on RASMARK aircraft flights to Wickenburg, Arizona. A vehicle registered to Donald JOSEPH with a Flagstaff, Arizona address has been seen at the RASMUSSON residence.

78. On March 16, 1993, Senior Special Agent Fred Schroeder and El Paso Police Senior Detective James Holland interviewed Christopher HINES. Mr. HINES stated that he was employed by

RASMARK Jet Charter from November, 1990 through September, 1991. Mr. HINES stated that shortly after he started working for RASMARK Jet Charter, Debra RASMUSSON gave him a check for $4,000.00 and told him to cash the check and bring the money back to her. When Mr. HINES returned the money to Debra RASMUSSON he asked if the money was a Christmas bonus for all of the employees. Debra RASMUSSON stated that it was not. Debra RASMUSSON further stated that the money was for a person who had given them a lot of business. Mr. HINES believes the money was going to Andy GANTKESSY, the Ford Motor Company contact used by the RASMUSSONs in El Paso, Texas. On another occasion Debra RASMUSSON gave Mr. HINES a check to cash. In the ledger, Debra RASMUSSON wrote the notation "Chris's Commission". When HINES questioned Debra RASMUSSON about the check, she stated that the money was not for HINES. Debra RASMUSSON went on to state that she owed Andy (GANTKESSY) some money, but could not put his name on the check.

79. Mr. HINES stated when he took bills or invoices for the Ford account he was told not to give the paper work to anyone other than GANTKESSY. Mr. HINES further stated that GANTKESSY and RASMARK Jet Charter were billing Ford for flights that did not occur.

80. In his position with RASMARK Jet Charter Mr. HINES was given an overdraft notice from the First Bank of Avon, Colorado, account number 32-1044. The account is in the name of Mark and Debbie RASMUSSON, 6825 Convair, El Paso International Airport, El Paso, Texas.

81. On one occasion a Mexican male, accompanied by a women and children hired RASMARK Jet Charter to fly them to the Cayman Islands. Debra RASMUSSON and the man went into her office, closed and locked the door. The paid Debra RASMUSSON in cash, approximately $13-14,000.00. Debra RASMUSSON came out of the office after the man left and showed Mr. HINES the money. Mr. HINES told Debra RASMUSSON that it was not a very good way for the man to pay if it was a business trip, because he would have no records. Debra RASMUSSON told Mr. HINES not to worry about the

money it was none of his concern.

82. On Thursday March 18, 1993 El Paso County Sheriffs Detectives Neil Baker and Jerry Keith obtained the residential trash from the RASMUSSON residence located at 11157 Leo Collins, El Paso, Texas. Detectives Baker and Keith obtained an airport landing receipt in the name of RASMARK Jet Charter in the trash.

83. On March 22, 1993, El Paso County Sheriffs Detective Neil Baker obtained the residential trash from the RASMUSSON residence at 11157 Leo Collins Dr. El Paso, Texas. From the trash Detective Baker recovered a computer generated balance sheet reflecting four flight invoices from RASMARK Jet Charter. This invoice details four flights on behalf of Ford Motor Company.

84. On April 5, 1993 El Paso County Sheriffs Detectives Neil Baker and Jerry Keith obtained the residential trash from the RASMUSSON residence 11157 Leo Collins, El Paso, Texas. Detectives Baker and Keith found a BANAMEX deposit receipt in the amount of "$15,216,055.00" however the receipt does not indicate if the amount is for dollars or pesos. The receipt lists an account number of 738165-3 and a date of July 23, 1992. This receipt is in the name of Mark B. RASMUSSON.

85. On Thursday April 8, 1993 El Paso County Sheriffs Detective Neil Baker obtained the residential trash from the RASMUSSON residence at 11157 Leo Collins Dr. El Paso, Texas. The following items were removed from the trash by Detective Baker:

(1) Two pages from a personal phone book with business telephone numbers. These numbers are all aviation related.

(2) An internal telephone or intercom listing for all phones inside the house at 11157 Leo Collins. This list gives the location of telephones and the fax machines located in the house as well as any special dialing instructions.

(3) A yellow sheet of 8.5 x 11 paper with the notation King Air

Albuq. Friday written in the right corner. Under this notation are the names "Juan & Tim". The paper also has "Westin 534- 3000" written in the lower left corner. This number is to the Westin Paso Del Norte Motel, El Paso, Texas. The paper also has several other notations on the upper right side.

(4) Two American Express receipts. One of these is in the name of RASMARK Jet Charter dated March 1, 1993 the charge is from a merchant in Mexico. The second is in the name of Debra RASMUSSON. The account numbers on the credit cards used in these transactions are different.

86. On Monday April 19, 1993 El Paso County Sheriffs Detective Neil Baker conducted a residential trash pickup at the RASMUSSON residence, 11157 Leo Collins Dr. El Paso, Texas. The following items were removed from the trash:

(1) A blank note pad from RASMARK Jet Charter.

(2) A sheet of paper from a MZM Delivery Service Note with the name of Don JOHNSON & Cindy 471-5776. The telephone number does not have any area code.

(3) A letter from the Sontrol alarm company about Mark RASMUSSON's residence Account, #9579 and 10504, with the alarm company.

(4) A letter and price list from Phillips 66 Company with a listing of aviation fuel prices and dealer locations through out the United States.

(5) A Mexican permit for Anna RASMUSSON to travel by aircraft into Mexico. The permit is filed in Puerto Vallarta, Mexico and dated December 30, 1992.

87. On April 20, 1993 El Paso Police Department Senior Detective James Holland reported to me that a Confidential Source reported that Mark RASMUSSON had been arrested in the Cayman Islands and was being held in custody by the Royal Cayman Police. I

confirmed that Mark, RASMUSSON had been arrested and was in custody in the Cayman Islands through U.S. Customs Special Agents assigned as liaison to the Cayman Islands authorities. Through this inquiry I learned that the arrest of Mark RASMUSSON was not related to trafficking in controlled substances nor financial violations.

88. At approximately 12:00 PM on May 3, 1993, El Paso County Sheriff's Detective Jerry Keith established surveillance on the RASMARK Jet Charter Office. Detective Keith observed a white colored pick-up, Texas license CB-1779 depart the business. The vehicle is registered to Gildardo ROSALES, 10245 Whitetail, El Paso, Texas. ROSALES is the target of an on going joint investigation into controlled substance trafficking being conducted by U.S. Customs and the El Paso County Sheriffs Office.

89. On May 6, 1993 El Paso County Sheriffs Detective Neil Baker obtained the residential trash from the RASMUSSON residence at 11157 Leo Collins, El Paso, Texas. In the trash, Detective Baker found Pilot duty logs in the name of RASMUSSON, BURNETT, Schroeder, MLESCH, and other copilots. All of these logs are dated in 1989 and 1990.

90. On May 11, 1993 U.S. Customs Senior Special Agent Fred Schroeder and FBI Special Agent Joe Acosta interviewed Joe SEAVERNS. Mr. SEAVERNS is the former owner of DOVE MOTORS in El Paso, Texas and the former of the residence at 11157 Leo Collins, El Paso, Texas which is now owned and occupied by the RASMUSSONs.

91. Mr. SEAVERNS stated that he had sold his home to the RASMUSSONs for a total price of $302,000.00 and that the RASMUSSONs had made a down payment to him of over $129,000.00 in a mixture of personal checks, cashier's checks and cash. Mr. SEAVERNS stated that he had heard that Mark RASMUSSON had inherited a large sum of money from his grandfather, but that this money had been "blown" before Mark RASMUSSON arrived in El Paso, Texas.

92. On May 13, 1993, El Paso Police Senior Detective James Holland and U.S. Customs Senior Special Agent Fred Schroeder obtained the residential trash from 11157 Leo Collins, El Paso, Texas. Special Agent Schroeder retrieved a folded up advisement form from the Internal Revenue Service giving the requirements for reporting cash purchases over $10,000.00.

93. I have obtained a copy of an affidavit sworn to by Jerry BURNETT on May 21, 1993. This affidavit was made by Jerry BURNETT as part of the RASMUSSON divorce case. A copy of the affidavit was obtained from the Clerk of the District Court for El Paso County, Texas. In the referenced affidavit, Mr. BURNETT stated that he was employed (Mr. BURNETT was fired by Debra RASMUSSON while Mark RASMUSSON was in the Cayman Islands, upon his return Mark RASMUSSON re-hired BURNETT) as the Chief Pilot of RASMARK Jet Charter until he was fired by Debra RASMUSSON. Mr. BURNETT further stated that he had seen Debra RASMUSSON destroy records in the offices of RASMARK JET Charter and he had also seen Debra RASMUSSON remove records which are required by the FAA from office files and place them into a box.

94. On May 24, 1993 U.S. Customs Confidential Source SA371EP who has access to the records of BANAMEX provided me with a computer printout from the BANAMEX computer which showed Mark B. RASMUSSON of 6805 Boeing, El Paso, Texas to be the holder of BANAMEX account number 7381653. SA371EP told me that his account is located at the BANAMEX branch in Guymas, Sonora, Mexico.

95. On June 2, 1993, U.S. Customs Special Agents Fred Schroeder, and Larry Brown, Federal Bureau of Investigation Special Agent Joe Acosta and El Paso Police Department Senior Detective James Holland and I contacted Andrew GANTKESSY at 15 Leigh Fisher Drive, El Paso, Texas. GANTKESSY is an employee of Favesa (a Mexican subsidiary of Ford Motor Company). Mr. GANTKESSY agreed to talk to Agents and was interviewed for a short time about his knowledge and involvement with Debra and Mark RASMUSSON.

96. Mr. GANTKESSY stated that he had received money from Debra and Mark RASMUSSON, however he did not think the money was a pay off. Mr. GANTKESSY was told by Debra RASMUSSON that she was giving him the money because she liked him. Mr. GANTKESSY further stated that he had gone on several free rips with the RASMUSSONs.

97. Special Agent Schroeder made arrangements to have Mr. GANTKESSY come to the Office of Enforcement for a more detailed interview on June 3, 1993.

98. On June 3, 1993, Special Agent Schroeder and Special Agent Joe Acosta again interviewed Mr. GANTKESSY.

99. Mr. GANTKESSY stated that he received money on several occasions from Debra RASMUSSON, other than on the trips. Mr. GANTKESSY stated that Debra RASMUSSON gave him different amounts anywhere from $50.00 to $3,500.00 in cash. Mr. GANTKESSY stated that on one of the trips to Las Vegas Mark RASMUSSON gave him $1,200-1,500.00, stating that it was from Debra RASMUSSON. Mr. GANTKESSY was not sure however what the total amount that he received was.

100. Mr. GANTKESSY stated that Debra RASMUSSON also offered him a percentage of a company she was starting called "NEXT FLIGHT". Debra RASMUSSON stated that the company would be under David CHAVEZ's name in order to qualify for minority status. Mr. GANTKESSY stated that he again refused the offer.

101. On June 3, 1993 I spoke with Debra RASMUSSON via telephone. During the course of this conversation I asked Debra RASMUSSON if Mark RASMUSSON maintained Bank accounts in the Cayman Islands. Debra RASMUSSON responded by stating that Mark RASMUSSON has Bank accounts "everywhere".

102. On June 7, 1993 U.S. Customs Senior Special Agent Fred Schroeder obtained the residential trash from the RASMUSSON Special Agent Schroeder retrieved an announcement for a neighborhood

watch program with the following hand written notation on the back of the announcement: 25TK (this is the tail number for one of RASMARK's jets), 833-2872, elp-Herm-cash (this is believed to be an abbreviation indicating a flight in aircraft N25TK from El Paso to Hermosillo, Mexico for a cash payment).

103. On June 11, 1993 U. S. Customs Senior Special Agent Fred Schroeder obtained the residential trash from the RASMUSSON residence at 11157 Leo Collins El Paso, Texas. Special Agent Schroeder recovered a letter from Debra RASMUSSON to all company employees stating that during her absence Blanca AVELAR will be in charge of the day to day running of the business.

104. On June 17, 1993, El Paso Police Senior Detective James Holland obtained the residential trash from the RASMUSSON residence at 11157 Leo Collins, El Paso, Texas. Special Agent Schroeder retrieved a questionnaire from Ford Motor Company addressed to Mark B. RASMUSSON, 11157 Leo Collins, El Paso, Texas and an envelope from Golf Digest addressed to Debra RASMUSSON, 11157 Leo Collins, El Paso, Texas. Special Agent Schroeder also retrieved a bill from the Cayman Islands Health Services Authority, George Town, P. O. Box 915GT addressed to Mark RASMUSSON, 11157 Leo Collins, El Paso, Texas. The bill is for $73.17.

105. On June 28, 1993, El Paso Police Senior Detective James Holland, U.S. Customs Agents Larry Brown and Fred Schroeder obtained the residential trash from 11157 Leo Collins, El Paso, Texas. From the trash detective Holland retrieved an envelope with the name Bill Jilles and telephone number (214) 964-1641 hand written on the back. (Debra RASMUSSON hired Jilles as a pilot while Mark RASMUSSON was awaiting trial in the Cayman Islands. Mark RASMUSSON fired Jilles upon his return to the United States).

106. On July 26, 1993, El Paso Sheriffs Detective Neil Baker obtained the residential trash from the RASMUSSON residence at 11157 Leo Collins, El Paso, Texas. The following items were removed from the trash by Detective Baker:

(1) A letter from Fields and Healy, Attorneys at Law, 8340 Gateway East, El Paso, Texas addressed to Mrs. Debra L. RASMUSSON, 11157 Leo Collins, El Paso, Texas. The letter is requesting payment of $5,642.62 and $500.00 in attorney's fees to be paid to JOSEPH M. and Candace L. SEAVERNS. The letter that the SEAVERNS's paid $5,642.62 in order to cure the delinquent payments owed by Mark and Debra RASMUSSON with regard to the purchase of 11157 Leo Collins. (The RASMUSSON's never obtained a mortgage under their own names for the purchase of the property).

(2) A telephone listing, that appears to be from a computer address program, for local attorneys and business contacts. Many of these numbers are aviation business related.

(3) A listing of seven credit cards with the numbers and dates of expiration.

(4) Two RASMARK business telephone lists.

(5) A page from a date book with the following hand written note on it, 9400 Viscount, ste. 100, Larry Frost, Thursday at 9:30 AM.

(6) A check stub from the account of Mark and Debbie RASMUSSON, written to Debbie RASMUSSON, cash: spending money, dated 04-05-93, for $500.00.

(7) A fax dated 5-26-93 of a hearing held in regard to the divorce of Mark and Debra RASMUSSON. The hearing is regarding who would be placed in charge of the company, RASMARK, pending completion of Mark RASMUSSONs arrest in the Cayman Islands.

(8) A fax dated 05-27-93 from Morris and Associates Insurance Services, Inc., P. O. Box 6010, Folsom, Ca. The fax contains information about the insurance for the aircraft being used by RASMARK Jet Charter.

107. On August 8, 1993 Irasema SANCHEZ who is currently employed as a bookkeeper at RASMARK Jet Charter reported to the El

Paso Police Department that she was assaulted by Debra RASMUSSON. The police report of this incident indicates that Debra RASMUSSON came to RASMARK Jet Charter (Debra RASMUSSON is currently restrained from entering the RASMARK Jet Charter premises or interfering with the operation of the business by order of the State District Court due to the pendency of the previously mentioned divorce action), Debra RASMUSSON reportedly became enraged due to the fact that Ms. SANCHEZ refused to provide her (Debra RASMUSSON) with current RASMARK Jet Charter business records and assaulted Ms. SANCHEZ. Ms. SANCHEZ reported that she is under orders of her employer Mark RASMUSSON not to provide records to Debra RASMUSSON.

108. On November 4, 1993 El Paso Police Department Senior Detective James Holland contacted Ms. SANCHEZ regarding the reported assault. Detective Holland told Ms. SANCHEZ that he was following up on the assault report that Ms. SANCHEZ had filed against Debra RASMUSSON. Ms. SANCHEZ told Detective Holland that she is the custodian of records for RASMARK Jet Charter and that she keeps all business records at the offices of RASMARK Jet Charter. Ms. SANCHEZ stated to Detective Holland that during July of 1993 Debra RASMUSSON stole a file which Ms. SANCHEZ referred to as an "NFAA Drug File". Debra RASMUSSON has allegedly retained custody of this file and has repeatedly taunted Mark RASMUSSON with the fact that he will have difficulty with his business and related audits as long as Debra RASMUSSON has the referenced file.

109. On August 16, 1993, U.S. Customs Senior Special Agent Fred Schroeder obtained the residential trash from 11157 Leo Collins, El Paso, Texas. Special Agent Schroeder found the following items in the trash:

(1) A statement for recipients of interest income from the Avon National Bank, P.O. Box 5640, Avon, Colorado, in the name of Debbie MAYE, Tax ID number 840932005. This document is dated 1987.

(2) Pages from a personal telephone/address book, with business numbers hand written on the pages.

(3) A telephone list for RASMARK Jet Charter employees.

110. On August 23, 1993, El Paso Sheriffs Detective Neil Baker obtained the residential trash from the RASMUSSON residence at 11157 Leo Collins, El Paso, Texas. Detective Baker found an insufficient funds notice from Sun Word Savings addressed to Debra Lynn RASMUSSON.

111. On September 20, 1993, El Paso Sheriffs Detective Neil Baker obtained the residential trash from the RASMUSSON residence at 11157 Leo Collins, El Paso, Texas. Detective Baker found an 8.5 x 11 piece of yellow paper with hand written notations: dates, name of file and number of disk. Under each of these headings is a file name, date and disk number. Many of these file names are obviously related to the RASMARK Jet Charter business such as an entry titled "parts" and another titled "invoice" and another "FAR's" which is an reference to the Federal Aviation Regulations. Detective Baker also found a letter addressed to Dan Zents, RASMARK Jet Charter Inc., 6805 Boeing Drive, El Paso, Texas, (This letter had been opened). Detective Baker also found an over due notice from Transworld Systems Inc., 5880 Commerce Boulevard, Rohnert Park, California.

112. On October 25, 1993, El Paso Sheriffs Detective Neil Baker obtained the residential trash from the RASMUSSON residence at 11157 Leo Collins, El Paso, Texas. The following items were removed from the trash by Detective Baker:

(1) Six blank checks in the name of Debra L. RASMUSSON, El Paso, Texas. All of the checks have the same check number, 0230. The account number is 31209311602300012020064. The checks are from Sun World Savings Bank, 8700 Montana Avenue, El Paso, Texas.

(2) Check stub number 0581 from Next Flight, Incorporated. This check stub has the following notations hand written on the front, "$500.00 DTD 2/16/93 Debra RASMUSSON contract labor". I reviewed the incorporation documents for Next Flight Inc. I have learned that Debra RASMUSSON is an officer of this corporation.

(3) A bill from Safeguard Business Systems dated July 26, 1993. This bill is for business supplies and is addressed to RASMARK Jet Charter Inc.

113. On November 1, 1993, El Paso Sheriffs Detective Neil Baker obtained the residential trash from the RASMUSSON residence at 11157 Leo Collins, El Paso, Texas. The following item were removed from the trash:

(1) One commission note from RASMARK Jet Charter Inc. The note lists the collection date as 3/17 (no year). The amount is $3,250.00 indicating a commission amount of $325.00. The commission was paid to "Don". The initials on the bottom of the form are "DMJ". RASMARK Jet Charter had an employee by the name of Donald M. JOSEPH working during March of 1993.

(2) A partial commission note indicating that "Don" received a commission of $726.96. This form also has the initials of "DMJ" on the bottom line of the form.

114. On November 4, 1993, U.S. Customs Senior Special Agent Fred Schroeder obtained the residential trash from the RASMUSSON residence at 11157 Leo Collins, El Paso, Texas. The following items were removed from the trash:

(1) A sheet of memo paper with "RASMARK Jet Charter, Inc., El Paso, Texas, Cargo Pirates" printed on the top. The paper has the following hand written on it "Mark, Marcos Estrada from San Carlos Mon 4:00 60281". The memo paper had the address 6805 Boeing Dr., El Paso, Tx. 79925, Telephone number (915) 772-4616, FAX (915) 7795387, printed across the bottom.

(2) A form from San Carlos Country Club, A.C. in the name of Mark Benjamin RASMUSSON, 6825 Convair Rd., El Paso, Texas. This address is the old address for RASMARK Jet Charter when it was located in Cutter Aviation building. The form also lists several other names including Debbie Lynn RASMUSSON.

(3) A torn up envelope with a return address of RASMARK Jet Charter, Inc., 6805 Boeing, El Paso, Texas.

(4) An envelope from Ginnings Birkelbach & Keith Attorneys and Counselors at Law, P.O. Box 54, El Paso, Texas. The envelope is addressed to Ms. Debra RASMUSSON, 6805 Boeing Drive, El Paso, Texas. The envelope is dated June 15, 1993. There are three telephone numbers hand written on the envelope.

115. I have reviewed the Private Aircraft Arrival System which is a data base within the Treasury Enforcement Communication System. This inquiry was made on November 1, 1993 for calendar years 1988 through 1993. These records reflect all arrivals by aircraft, other than scheduled airlines, in the United States from foreign territory. These records also provide the names of the aircraft crew as well all passengers. I have interviewed five former pilots of RASMARK Jet Charter, all of these pilots were employed by RASMARK between 1990 and 1993. Both the Private Aircraft Arrival System and the pilots interviewed indicate that the RASMUSSONs utilize their Lear Jets and Falcon jet for frequent personal pleasure on both international and domestic travel. I have interviewed three other air freight and air Charter services operators. The people interviewed regarding the manner in which the RASMUSSONs utilize RASMARK Jet Charter jets for personal pleasure have told me that this type of aircraft utilization is not only contrary to all normal business practices but is prohibitively expensive based on comparison to the cost of even first class airline travel.

116. Mark RASMUSSON established residence in El Paso, Texas in late, 1987. Throughout the time that Mark RASMUSSON has been in the El Paso, Texas area he has repeated to numerous persons that the source of his wealth and lifestyle are an inheritance from his grandfather which Mark RASMUSSON has stated was approximately $2,000.000.00 Three confidential Sources who are close to Mark RASMUSSON have told me during 1992 and 1993 that Mark RASMUSSON depleted his inheritance before he arrived in El Paso, and that his current lifestyle is supported by "unknown sources of income". Debra RASMUSSON has stated to me and their accountants

that ninety per cent of their income is form Ford freight contracts.

117. Special Agents assigned to this investigation have spent numerous hours of surveillance at RASMARK Jet Charter and observed the coming and going of the aircraft to attempt to explain the RASMUSSONs wealth and lifestyle, Special Agents have observed an average of less than one flight per day.

118. JOSEPH SEAVERNS advised Senior Special Agent Schroeder and Special Agent Acosta that the RASMUSSONs paid in excess of $129,000.00 in a combination of cash, personal checks and cashier's checks as a down payment on the residence at 11157 Leo Collins. I know in my experience that these types of payments which utilize a combination of monetary instruments and currency are often transactions structured to avoid the reporting requirements of the Bank Secrecy Act and to disguise the source and origin of currency. I also know that it is common for persons engaged in criminal activity to take steps to avoid having major purchases and luxury items recorded in their names. The mortgage on the residence at 11157 Leo Collins Dr. remains in the name of Mr. SEAVERNS.

119. On November 15, 1993 I have reviewed a filing in the RASMUSSON divorce case by Larry Schwartz, attorney at law who represents Mark RASMUSSON. In this document Mr. Schwartz stated that the RASMUSSONs own 17 motor vehicles and vessels and five pieces of real estate, four of these with dwellings.

120. Christopher HINES and others have reported that the RASMUSSONs have accepted large cash payments for their services. Albert APODACA who was the account for RASMARK Jet Charter and the RASMUSSONs has told investigating Special Agents that the RASMUSSONs told him that they did not accept cash, however when their activities have come under scrutiny by government agencies the RASMUSSONs have produced "reconstructed invoices" for cash transactions and asked Mr. APODACA to alter or amend their financial reports to reflect an $11,000.00 which had been omitted from previous reports.

121. I have reviewed the Financial Data Base maintained by

the U.S.Department of the Treasury that maintains records of all Cash Transaction Reports which are required to be filled out by traditional financial institutions on all transactions in excess of $10,000.00 in currency. I made this inquiry on November 1, 1993 for tax years 1988, 1989, 1990, 1991, 1992, and 1993. There are no IRS forms 8300 which are required to be filed by businesses, such as RASMARK Jet Charter, to report when they receive cash payments in excess of $10,000.00. There are no forms 8300 filed by RASMARK Jet Charter nor the RASMUSSONs.

122. Based on the statements made by witnesses such as RASMARK Jet Charter Office staff, documentary evidence found in the residential trash, as well as Debra RASMUSSON's statements to DEA Special Agents regarding maintaining records at her home and my experience which indicates that persons engaged in money laundering and currency manipulation violations, I believe that there are accurate records of unlawful transactions kept by these persons in various formats and in what they believe to be safe locations such as their home and businesses.

123. Based on the statements of Mr. VARGAS and Mr. GANTKESSY I believe there is probable cause to believe that RASMARK Jet Charter has "double invoiced" flights for Ford Motor Company and bribed Mr. GANTKESSY to cooperate in this scheme. I know from my experience that persons engaged in money laundering will create false invoices for their business fronts to conceal and cover up illicit income from their criminal endeavors.

124. I believed that based on the statements of Debra RASMUSSON and the association of the RASMUSSONs with known controlled substances traffickers such as Jesus FLORES and Hector BARRERA there is probable cause to believe that the RASMUSSONs have in the past and are utilizing RASMARK Jet Charter to facilitate the transportation and laundering of the proceeds in trafficking in controlled substances.

125. I believe that, based on the statements of DEBRA RASMUSSON, information provided by Confidential Source SA371EP,

and the documentary evidence found in Debra RASMUSSON's vehicle and residential trash, there is probable cause to believe that Mark RASMUSSON has foreign Bank accounts which are not and have not been reported to the U.S. Government as required by the Bank Secrecy Act.

126. Based on the records I have received from Ford Motor Company I know that Ford Motor Company has paid RASMARK Jet Charter for their services by check sent through the U.S. mail. I know that the perpetration of a fraud, such as double invoicing for flights, which causes Ford Motor Company to mail a check to RASMARK Jet Charter through the U.S. Mail is a violation of Title 18 United States Code section 1341.

127. Based on the foregoing, I believe that there is probable cause to believe that the residence at 11157 Leo Collins, El Paso,Texas contains documents which are evidenc of violations of Title 18 USC 1956 and 18 USC 1957 as well as evidence of the related offense of Mail Fraud against Ford Motor Company. The Mail Fraud allegations as well as trafficking in controlled substances are "specified unlawful activities" as defined in Title 18 United States Code section 1956. I also believe there is evidence of violations of Title 31 United States Code

sections 5314 and 5316 as well as 31 CFR 103.23 and 103.24 contained in the residence at 11157 Leo Collins Drive, El Paso, Texas.

/s/ Lawrence E. Frost, Special Agent
United States Customs Service

Subscribed and sworn to before me this 19th Day of November, 1993

/s/ Janet Ruesch
United States Magistrate Judge

[Inventory in Record below]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

MARK B. RASMUSSON, ET AL., Plaintiffs,	)	
V.	)	CIVIL ACTION
	)	NO. EP-95-CA-475-F
LAWRENCE E. FROST, EL AL., Defendants.	)	

DECLARATION OF LAWRENCE E. FROST

1. I, Lawrence E. Frost, am a Senior Special Agent, Office of Investigations, U.S. Customs Service, El Paso, Texas, where I have been stationed since July 1991.

2. Since March 1992 I have been assigned as the Lead Customs Agent in the Financial Task Force, which was created at that time under the supervision of the Currency Group Supervisor, Office of Investigations, U.S. Customs Service, El Paso, Texas.

3. The purpose of the Financial Task Force is to investigate suspected money laundering operations with a nexus to the El Paso, Texas area, and consists of participating local, state, and federal enforcement entities.

4. I had no involvement in any law enforcement activities concerning one or more of the Plaintiffs until March 1992, when the Financial Task Force was created. During my investigation of Rasmark as a part of the activities of the Financial Task Force, I have reviewed DEA and other agency reports predating my assignment to the Task Force in 1992.

5. I have no information that would lead me to believe that Chris Hines has provided any information that was not reliable or that he was otherwise untruthful with any law enforcement investigators.

6. El Paso Police Department Officer Salas was not a member of the Financial Task Force and the association of the Task Force with him was limited. I had previously received a telephone call from an FBI agent who advised me that a friend of his, Officer Salas, had inquired as to the activities of the Rasmussons. I then contacted Officer Salas and informed him that I was the case agent on the Rasmusson case. Officer Salas told me that he was working as a bodyguard for Deborah Rasmusson on his off duty time. I ended the conversation by asking Officer Salas to call me if he observed anything of interest.

7. On or about May 23, 1992, I was contacted by Officer Salas who said that Deborah Rasmusson wanted to meet with me to discuss her husband's involvement in illegal activity. We met at the convenience store at the corner of Hawkins and Montana Streets, El Paso, Texas, and drove to the U.S. Customs Service office at 9400 Viscount Blvd., El Paso, Texas. At the meeting, I told Mrs. Rasmusson that if she wished to cooperate in the investigation of her husband and Rasmark, she would be an important witness in the case.

8. Upon the arrival of Mrs. Rasmusson at the office on or about May 23, 1992, accompanied by her son Ian Maye, I relieved her of a .38 caliber revolver, which was later returned to her attorney. She made several statements implicating her husband in illegal activity and I presented Mrs. Rasmusson with a Search Consent Form for Rasmark, which she declined to sign. Deborah told me that she would tell me everything I needed to know to put her husband away, but she wanted assurance that she would be able to keep the Rasmark business and related assets. I told Deborah that I did not have the authority to agree to her terms, she then became belligerent and abusive, so she was told to leave the building. On the way out, she set off the building's fire alarm.

9. As Mrs. Rasmusson left the building, she made a statement to Special Agents Eric Mills and Fred Schroeder that the box she was

carrying contained enough evidence to put Mark in prison for life. Upon being told of this statement, I went to the nearby Diamond Shamrock convenience store where Mrs. Rasmusson and her son had gone. When I started to pick up the box off the floor, Ian Maye became combative and had to be physically restrained by agents who had accompanied me to the store. I placed Ian in handcuffs and secured him in a Government vehicle. He was never thrown to the ground and no one placed a foot on his neck. I took custody of the box, placing it in the Government vehicle. In accordance with Customs Service policy, an Assistant U.S. Attorney was called and apprised of what had transpired. A search warrant was later obtained and the contents of the box were examined. Upon the arrival of El Paso Police Department officers to the store, Mrs. Rasmusson and her son were allowed to depart.

10. Neither myself nor to my knowledge have any members of the Financial Task Force made any statements or comments to State National Bank officials to the effect that Rasmark was a mere front corporation for money laundering or that Mark B. Rasmusson was a known major drug dealer.

11. I prepared for the signature of Special Agent in Charge Michael Lappe the letter sent to Ford Motor Company to assist that company in understanding the scope and nature of the ongoing investigation and what type of information was relevant to the subpoenas it had received. The letter was sent to the Staff Security Investigations section of the company for this limited law enforcement purpose. It is also noted that the information subpoena served on Ford Motor Company was of such a complexity that I decided to send Hector Barrera, a Customs Service Auditor, to Ford World Headquarters to assist in the search and retrieval process.

12. On or about June 2, 1993, my self and about four other agents visited Andrew A. Gantkessy in his office at the Ford Favesa Warehouse. He willingly talked to us and voluntarily came to the Customs Service office the next day and provided a more detailed statement to the investigators.

13. I have no knowledge of any meetings among Mr. Gantkessy and Ford officials or of the details of Mr. Gantkessy's termination of employment with Ford Motor Company.

14. Search warrants were obtained from the U.S. Magistrate Judge for the Rasmark business address and the residence address of Mark Rasmusson and Deborah Rasmusson. The executions of the warrants were not by forced entry, and were conducted in an orderly and professional manner. At the business location, Rasmark employee Gabby Sanchez was advised to copy any records deemed essential to the continuing operations of the business. We also spent several hours copying information on the Rasmark computer system to avoid seizing the company computers. I thereafter made every effort to return critical documents as quickly as possible, consistent with the needs of the investigation.

15. No guns were seized from either the business or the residence locations.

16. To the best of my knowledge the information provided in the affidavits supporting the search warrants was based on reliable sources and entirely accurate and correct. No pretext or false or misleading information was knowingly utilized and there was no intent to deceive the magistrate.

17. I have no reason to believe that documents specified in the resident search warrant affidavit as having been obtained from trash collections are not accurate and I have no information or knowledge that there was ever a covert entry without a search warrant to the Leo Collins residence of Mr. and Mrs. Rasmusson.

18. I have never engaged in any intimidation or harassment of Deborah L. Rasmusson nor have I ever threatened her to obtain information or evidence against Mark B. Rasmusson.

19. I have no knowledge of an attack upon Mrs. Rasmusson and her son at a stoplight on or about January 1994.

20. I have no knowledge of any discussions with school authorities on or about March 1994 concerning the death of a friend of Mrs. Rasmusson's children.

21. I have no knowledge of any incident involving an assault on Mrs. Rasmusson at her Dale Douglas residence on or about June 1994.

22. I have no knowledge of an incident occurring at a birthday party for her son on or about December 12, 1994.

23. Neither myself nor to my knowledge have any members of the Financial Task Force ever made comments or statements to Texas Commerce Bank officials to the effect that Mark Rasmusson and Rasmark were fronts for drug money laundering or that Mark B. Rasmusson was a major drug dealer.

24. I have no knowledge of any seizures of Mrs. Rasmusson's car(s) or of her arrests and prosecution on or about August 8, 1993, December 1993, March 1995, June 1995, and November 1995.

25. I have never met or talked with Joe Teuchert or Joseph Sudomir.

26. I was neither involved in nor do I have any personal knowledge of the remaining allegations contained in the plaintiffs' Second Amended Petition.

27. I swear under penalty of perjury that the foregoing statements are true and correct."

1-30-96
DATE

/s/ Lawrence E. Frost
Office of Investigations
U.S. Customs Service

AFFIDAVIT OF LAWRENCE E. FROST

STATE OF TEXAS §
COUNTY OF EL PASO §

1. BEFORE ME, the undersigned authority on this day personally appeared LAWRENCE E. FROST, known to me to be the person whose signature is subscribed below and after being duly sworn did upon oath depose and state the following:

2. My name is LAWRENCE E. FROST. I am over the age of 18 and am fully competent to make this affidavit. I hereby state that I have personal knowledge of the facts stated herein and that these facts are true and correct.

3. I am employed as a Special Agent by the United States Department of the Treasury, U.S. Customs Service. In 1993, I was involved in an investigation regarding Plaintiffs Mark Rasmusson and Deborah Rasmusson. In connection with this investigation I interviewed GAIL BEACH once on March 9, 1993, in El Paso, Texas. The contents of the matters discussed in such interview were reduced to writing and have been previously produced to the Plaintiffs in this litigation.

4. After March 9, 1993, I recall telephonically contacting GAIL BEACH approximately three to four times to clarify details previously discussed. I had no further contact with GAIL BEACH after September, 1993. I have reviewed the records maintained by my Agency concerning Mark Rasmusson and Deborah Rasmusson and have not located any records which indicate GAIL BEACH made any statements, or supplied any information to the United States Customs Service regarding Mark Rasmusson or Deborah Rasmusson, or the matters

alleged by such Plaintiffs in this litigation, after September, 1993.

Further, Affiant sayeth naught."

/s/ Lawrence E. Frost

SWORN AND SUBSCRIBED TO BEFORE ME the undersigned authority on this 1st day of April, 1997.

/s/ Margaret M. Aguirre
Notary Public in and for
State of Texas

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

MARK B. RASMUSSON, ET AL,	)	
	)	
Plaintiffs,	)	
	)	CIVIL ACTION
	)	NO. EP-95-CA-475-F
LAWRENCE E. FROST, ET AL,	)	
	)	
Defendants	)	

DECLARATION OF LAWRENCE E. FROST

1. I, Lawrence E. Frost, am a Senior Special Agent, Office of Investigations, U.S. Customs Service, El Paso, Texas where I have been stationed since July 1991.

2. From March 1992 until August 1996 1 was assigned as the lead Customs Special Agent in the Financial Task Force (FTF), which was created at that time under the supervision of the Currency Group supervisor, Office of Investigations,, U.S. Customs Service, .E1 Paso, Texas.

3. The,purpose of the Financial Task Force in to investigate suspected money laundering operations with a nexus to the El Paso Texas area, and consists of participating local, state, and federal law enforcement entities.

4. I had no involvement in any law enforcement activities concerning one or more of the Plaintiffs until March 1992, when the Financial Task Force was created. During my investigation of Rasmark as a part of the activities of the Financial Task Force, I have reviewed DEA and other agency reports predating my assignment to the Task Force in 1992.

5. I have never entered into an agreement with anyone nor an I aware of anyone having an agreement, "the goal of which was to steal the assets of RASMARK".

6. I have never participated in nor am I aware of any "bogus investigations" nor "sham prosecutions".

7. I have never implemented nor participated in a plan to "shut down RASMARK by carrying out a pattern of harassment, intimidation, coercion and retaliation against the Plaintiffs".

8. I have never participated in, directed, nor an I aware of any strip searches of any RASMARK passengers nor crew members.

9. I have never participated in nor directed anyone else to conduct a search of RASMARK aircraft.

10. On June 1, 1993, I and other agents did approach Mr. Bill Jiles and request an interview with his. Mr. Jiles indicated that he was a new employee of RASMARK and had no information to provide. Approximately four (4) hours later, Detective Holland received a telephone call which informed him that Mr. Jiles was at the El Paso Police Department airport detachment office. Mr. Jiles was requesting to speak with the agents who had contacted him earlier in the day. The result of this second meeting with Mr. Jiles was his concern regarding his current employers. I informed Mr. Jiles that as long as he committed no criminal acts, that he would not be in jeopardy. Contrary to the plaintiffs statements, I have never worked out of any office space at Cutter Beechcraft and the FTF did not have an office at Cutter Beechcraft.

11. As stated in the paragraph above, Mr. Bill Jiles did not accompany Special Agents to their Office on June 1, 1993. In fact, Mr. Jiles came to an office of the El Paso Police Department seeking contact with Special Agents several hours after he was originally approached.

12. In the affidavits for the search warrants for the RASMUSSON residence and the RASMARK JET CHARTER business

location, which I prepared, I did not utilize any information from El Paso Police Department undercover police officers.

13. I have never withheld information from any judicial officer that would prevent that judicial officer from having an opportunity to fully evaluate all available evidence and make a detached and neutral decision regarding the issuance of a search warrant nor any other type of court order.

14. I have never placed bogus information in an affidavit of any kind, specifically including the two affidavits of November 19, 1993, which resulted in the issuance of search warrants for the RASMARK offices and RASMUSSON residence.

15. I have never, nor am I aware of any other officer, "setting out to manufacture by harassment, intimidation, coercion and retaliation" any evidence or facts in any case, specifically including the investigative activities carried out in relation to the RASMUSSONs and Andrew GANTKESSY.

16. I have never intentionally presented any misinterpretations to any person at any time, specifically including the affidavits for the two search warrants of November 19, 1993.

17. I have never presented any fabrications nor misleading statements in any document of any kind, specifically including the two search warrant affidavits of November 19, 1993.

18. El Paso Police officer Salas was never a member of the FTF neither officially nor "unofficially" and the association of the Task Force with him was limited. I had previously received a telephone call from an FBI agent who advised me that a friend of his, Officer Salas, had inquired as to the activities of the RASMUSSONs. I then contacted Officer Salas and informed him that I was the case agent on the RASMUSSON case. Officer Salas told me that he was working as a bodyguard for Deborah RASMUSSON on his off duty time. I ended the conversation by asking Officer Salas to call me if he observed anything of interest.

19. I have never individually nor in concert with any other person, acted for the expressed purpose of ruining Mark RASMUSSON, Deborah RASMUSSON, RASMARK, and Andrew GANTKESSY".

20. I have never, nor an I aware of anyone else, ever asking GANTKESSY to cooperate in "wire tapping" nor "fabricating lies against the RASMUSSONs and RASMARK".

21. I have never participated in, nor approved, of a plan to continue any "unlawful investigation" nor an I aware of any such action by any other person.

22. I have never presented, nor an I aware of any other person, presenting any false information to an OCDETF committee, specifically including the matter which lead to investigative activities relating to the plaintiffs in this case.

23. I have never violated my oath of office nor have I ever intentionally violated the civil rights of any person.

24. I have never had any contact with Bill Dunmead, Dave Blair nor Dick McQuaid of Ford Motor Company.

25. I have never been a part of any "plans", nor an I aware of any other person, being involved in a "plan" to disrupt the business relationship between the plaintiffs and Ford Motor Company.

26. I have never asked Deborah RASMUSSON to sign any type of form that would consent to the seizure of any RASMUSSON nor RASMARK assets.

27. During the incident of May 23, 1992, Deborah RASMUSSON through George Salas contacted me and indicated that she feared that her husband was planning to kill her and wished to cooperate with Special Agents in exchange for protection from her husband. There were not, at any time, 10 to 12 agents present. There were no drawn firearms displayed by any person other than Deborah RASMUSSON.

28. During the incident of May 23, 1992, nor at any other time, have I ever told Deborah RASMUSSON that her husband, nor any other person, was plotting to kill her.

29. During the Incident of May 23, 1992, nor at any other time, have I ever told Deborah RASMUSSON that I was aware that she had allegedly complained about people peeking in her windows.

30. During the incident of May 23, 1992, nor at any other time, have I ever stated to Deborah RASMUSSON that there were agents behind a one way mirror, nor did I ever tell her there were agents behind a one way mirror to protect her.

31. I never told Deborah RASMUSSON that she was going to lose any of her assets.

32. I never mentioned the names of Sib Abraham, Richard Esper nor Judge Pena to Deborah RASMUSSON.

33. During the incident of May 23, 1992, Deborah RASMUSSON never stated to me that Mark RASMUSSON was not engaged in illegal activities. In fact, Deborah RASMUSSON attempted to trade information on Mark RASMUSSON for an agreement that none of the assets of the plaintiffs would be seized and she would retain possession of all assets.

34. I never presented any "paper" to Deborah RASMUSSON which would assign the assets of RASMARK to the government. I presented a standard consent to search form to Deborah RASMUSSON.

35. During the incident of May 23, 1992, nor at any other time, have I ever been verbally abusive nor physically abusive with Deborah RASMUSSON, nor have I ever "pushed her feet off a coffee table". I an not aware of any other law enforcement officer having committed any of these acts.

36. During the incident of May 23, 1992, I never stated nor did I hear any one else state "this never happened"

37. During the incident of May 23, 1992, I did not prevent Deborah RASMUSSON from leaving the building after she pulled the fire alarm. As a matter of fact, Deborah RASMUSSON left the building immediately after pulling the fire alarm.

38. On May 23, 1992, upon my arrival at the Diamond Shamrock Store the door was not locked. It was never necessary for me to show the store clerk my badge and demand entry.

39. On May 23, 1992, I did not "grab Ian (MAYE) by the neck and throw him to the ground". During this incident MAYE became assaultive and was restrained by Senior Special Agent Eric Mills. MAYE would not cease his assault attempts and was handcuffed for his own protection.

40. At all times relevant to the incident of May 23, 1992 Deborah RASMUSSON and MAYE .were free to leave and nothing was ever said by any person to cause then to believe that they were in any type of custodial situation.

41. I never told Deborah RASMUSSON that she would be sorry for not cooperating.

42. I made no false statements in the affidavit for the search warrant of May 26, 1992.

43. I did not tell William Cole that the charges against Mark RASMUSSON, arising out of the FLORES investigation, had been dropped because a witness failed to appear.

44. I have not, nor an I aware of any other law enforcement officer nor person acting as an agent of a law enforcement officer, having entered the RASMUSSON residence or RASMARK office unlawfully.

45. On November 10, 1992 1 did not attempt to cause Deborah RASMUSSON to sign any papers assigning her vehicle to the U.S. Government. I did not fabricate a seizure of marijuana in Deborah

RASMUSSON's vehicle. I did not seize Deborah RASMUSSON's vehicle. Additionally, it should be noted that Special Agent Fred Schroeder was not present at the November 10, 1992 incident.

46. Gail Beach never stated to me that the information that she provided to me was based on rumors.

47. In reference to the interview of Steve Thorn, I have no reason to believe that Steve Thorn was under the influence of alcohol when he spoke with Donald JOSEPH.

48. All evidence seized by the FTF was maintained in a proper chain of custody. Special Agents and Police officers assigned to the FTF followed all pertinent laws and regulations as well as specific agency guidelines relating to obtaining the trash from the RASMUSSON residence.

49. At no time did I, nor any member of the FTF of which I an aware, enter the curtilage of the RASMUSSON residence without a lawfully issued search warrant.

50. Andrew GANTKESSY was never forced, coerced nor threatened to do or say anything by myself, nor an I aware of any other member of the FTF having threatened, coerced or forced GANTKESSY to do anything. I, nor any other law enforcement officer that I am aware of, ever threatened to arrest GANTKESSY. GANTKESSY never told me, nor anyone else involved in this investigation, that he had won flights on RASMARK aircraft in a raffle.

51. Andrew GANTKESSY never asked to speak to an attorney when I interviewed him.

52. I know nothing about a RASMARK aircraft being stopped and searched in Indianapolis, Indiana.

53. I, nor anyone involved in the investigation of the plaintiffs, coerced Ford Motor Company to do anything.

54. I was present for a small portion of GANTKESSY's deposition on March 18, 1993. I was not present for the "purpose of harassing, intimidating GANTKESSY" for any reason. I was present in hopes of gaining information that I felt GANTKESSY was withholding from investigating Special Agents.

55. At the execution of the search warrant at the offices of RASMARK on November 22, 1993 there were not 100 agents present. Special Agents did not search the aircraft nor vehicles associated with RASMARK, due to the fact that the vehicles and aircraft were not included in the search warrant.

56. There were not 20 to 30 agents present at the search of the RASMUSSON residence on November 22, 1993.

57. No records seized from RASMARK nor the RASMUSSON residence were lost. I, nor any other member of the FTF have ever refused to return necessary business records. In fact, I told the attorneys who, handled the RASMUSSON divorce how to obtain the records through a Court Order.

58. I have never used "uncorroborated rumors, innuendos, misstatements, misinterpretations nor out right fabrications" in any affidavit, specifically including the search warrant affidavits related to the investigative activities involving the plaintiffs.

59. I have no information whatsoever which would lead me to believe that the informants who provided information used in the search warrants for plaintiff's property, have ever been found to be unreliable.

60. At no time did I, nor anyone I am aware of, covertly enter the RASMUSSON residence.

61. In reference to Count I of the plaintiffs' First Cause of Action , I have never engaged in the violation of the plaintiffs' rights nor in any cover-up of any conspiratorial acts. Additionally, I have never been a part of, nor am I aware of the existence of any conspiracy to

deprive the plaintiffs of their constitutional rights.

62. I have never engaged individually, nor in concert with any other person, in a pattern of harassment, intimidation, and retaliation against plaintiffs, an a part of an alleged conspiracy to steal the assets of Mark and Deborah RASMUSSON.

63. I, nor any other person that I am aware of, have communicated false and fabricated facts to anyone, including Ford Motor Company, in order to stigmatize the plaintiffs' as drug dealers, money launderers, or major criminals, nor have I engaged in any cover-up of any alleged conspiratorial acts relating to this allegation.

64. In reference to Count III, Third Cause of Action, of the plaintiff's complaint, I have never engaged in a conspiracy to steal the assets of Mark and Deborah RASMUSSON through the forfeiture process. I have never prepared a false affidavit to obtain a search warrant. I have never conducted a search, nor directed anyone else to conduct a search of the plaintiffs' persons, property, automobiles, aircraft, business nor home, without a search warrant or other lawful authority. In fact, I have never searched the person nor aircraft of the plaintiffs'. I conducted one search of an automobile driven by Deborah RASMUSSON under the Border Search Exception to the Fourth Amendment search warrant requirement. The searches of the RASMARK offices and RASMUSSON residence on November 22, 1992, [sic] were conducted pursuant to lawfully issued federal search warrants.

65. On November 10, 1992, I did not search the person of Deborah RASMUSSON, nor did I seize her vehicle.

66. On June 1, 1993, I did not search a RASMARK aircraft. In fact, it should be noted that this allegation contradicts facts presented relating to this incident in the plaintiffs' own allegation of fact in this complaint. Additionally, Special Agent Larry Brown was in no way involved in this incident.

67. On June 17, 1993, 1 nor any of the other persons listed

engaged in any conspiratorial act of any kind.

68. I have no knowledge of the alleged search incident which occurred on September 1, 1993.

69. On November 22, 1993, I did, in fact, execute a lawfully issued search warrant for the RASMARK offices. It should be noted Lue Jackson, Larry Harrell, Dante Orante, C.W. Moore, Cynthia Mandujan and Daniel Ramirez were in no way involved in the execution of these search warrants. The affidavits for this search warrant did not contain any false nor misleading information.

70. On November 22, 1993, 1 did, in fact, execute a lawfully issued search warrant for the RASMUSSON residence. It should be noted that Lue Jacksont Larry Harrell, Dante Orante, C.W. Moore, Cynthia Mandujan and Daniel Ramirez were in no way involved in the execution of these search warrants. The affidavits for this search warrant did not contain any false nor misleading information.

71. I, nor anyone else that I an aware of, ever entered the curtilage of the RASMUSSON residence at any time without authority of a lawfully issued warrant.

72. In reference to Court VIII, Eighth Cause of Action, of the plaintiffs' complaint,, as previously stated I have never been a member of, nor an I aware of the existence of, any conspiracy against the plaintiffs'.

73. The plaintiffs' have alleged the existence of a "Plan A, B, and C". What the plaintiff's refer to as "Plan A" is commonly referred to by Federal Agents as a criminal investigation. I am not aware of, nor have I ever heard of, what the plaintiffs' refer to as "Plan B nor C".

74. The FTF never carried out any "raids" on RASMARK aircraft.

75. In reference to Count IX, Ninth Cause of Action, of the plaintiffs' complaint, I have never committed an act nor omission that was wanton, malicious, and done in conscious disregard for and with

deliberate indifference to the rights of any person.

76. All of my actions during the investigation of the Plaintiffs were done in good faith and within the course and scope of my federal employment.

77. I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge. Executed on the 2 day of April, 1997.

/s/ Lawrence E. Frost
Senior Special Agent
Office of Investigations
U.S. Customs Service

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

MARK B. RASMUSSON, ET AL., Plaintiffs,	)	
V.	)	CASE NO. EP-95-CA-475-F
LAWRENCE E. FROST, EL AL., Defendants.	)	

DECLARATION OF THOMAS P. LENOX

I, THOMAS P. LENOX, declare and say:

1. I am a GS-1811 Criminal Investigator (or "Special Agent") of the United States Department of Justice, Drug Enforcement Administration (DEA). I have held this position since July 1986.

2. I currently am assigned to DEA's San Diego, California, Field Division. I have been in San Diego since March 1994. Earlier in my DEA career, I was assigned to DEA's El Paso, Texas, District Office. I was assigned to that office from February 1987 until March 1991.

3. While I was in El Paso, I participated in an Organized Crime Drug Enforcement Task Force (OCDETF) investigation of a large drug trafficking organization operated by an individual named Jesus Flores. DEA became involved in this investigation in late 1989. I served as one of the case agents on this investigation during my assignment in El Paso.

4. During the course of the investigation, we learned that the Flores organization was using Rasmark Jet Charter, Inc., an aircraft company owned by plaintiffs Mark and Deborah Rasmusson, to fly from

place to place. Interviews with employees of Rasmark Jet Charter, Inc., and with members of the Flores organization strongly indicated that plaintiffs knew of Flores' drug trafficking activities. The investigation also revealed that Rasmark Jet Charter, Inc., treated members of the Flores organization differently than all other customers, in that documentation of the flights was not kept, cash payments were accepted, and so forth.

5. Plaintiff Mark Rasmusson was not a major target of this investigation. Instead, during the course of the investigation into Flores and his principal coconspirators, evidence indicated that Mark Rasmusson was providing assistance to the organization in the form of air travel for trafficking activities. In September 1990, a Federal grand jury indicted Flores and a number of his coconspirators. Mark Rasmusson was indicted at that time for one count of aiding and abetting the Flores organization.

6. On September 26, 1990, Special Agent Steven Perkins and I contacted plaintiff Mark Rasmusson and his attorney, Richard Esper. We informed them that we had a warrant for Mark Rasmusson's arrest, and we made arrangements for Mark Rasmusson to turn himself in on September 27, 1990, which he did.

7. I deny plaintiffs' allegations that I fabricated or in any way participated in the fabrication of any of the evidence recorded in DEA Reports of Investigation, presented to the grand jury, or presented to the court at trial.

8. Since leaving El Paso in March 1991, I have had little to do with the Flores investigation. I returned to El Paso for the Flores trial, and from time to time I have provided advice to the agents in El Paso who continued the investigation of Flores' coconspirators who were not indicted in the initial round of indictments. I have not participated in any way in any further investigation of Mark Rasmusson or any of the other plaintiffs since leaving El Paso.

9. I declare under penalty of perjury that the foregoing statements are true and correct.

06/26/96
Date

/s/ Thomas P. Lenox
Special Agent
Drug Enforcement Administration

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

MARK A. RASMUSSON, et.al.,	)	
	)	
Plaintiffs,	)	
vs.	)	Cause No.:
	)	
LAWRENCE E. FROST, et.al.,	)	EP-95-CA-475-F
	)	
Defendants.	)	

AFFIDAVIT

STATE OF TEXAS
COUNTY OF EL PASO

On this day personally appeared the person known to me to be GEORGE SALAS, who after been duly sworn stated upon his oath as follows:

1. "My name is GEORGE SALAS, and I am over the age of 21 years, and am competent to make an oath. I have personal, first hand knowledge of all facts and matters set out in this affidavit. I have been employed by the City of El Paso as a Uniformed Patrolman for the El Paso Police Department since October 28, 1977.

2. On January 14, 1992, while I was working as a Uniformed Patrolman for the El Paso Police Department I was dispatched to 6825 Convair, El Paso, Texas where I spoke to Mark Rasmusson and Deborah Rasmusson. They identified themselves to me as the owners of Rasmark Jet Charter, Inc. The reason I was dispatched to their offices is that there was a threatening phone call on their answering machine. The recording was played for me and it was a threat to kill one or both of them. They

told me that they thought they knew who the individual was and they identified the suspect as a Joe Sudomir. They gave me some of the details about their prior dealings with him and why they felt he was the one who had made the threatening phone call. I advised them to be on the look out for this individual and to notify the police department if he was seen and I also advised him to avoid any contact with him. As I was finishing my interview with them Deborah Rasmusson asked me for my work telephone number, and I gave it to her.

3. About two weeks after I was dispatched to the offices of Rasmark Jet Charter, Inc., I received a phone call from Mrs. Deborah Rasmusson and she asked if I could do private security work for her. She explained that her husband was out of town very frequently and that someone was harassing her and that she wanted to hire me for protection. I told her I was available to do off duty security work, including providing body guard services. A short time after the initial phone call from Deborah Rasmusson she called from her office and I went to her office and took her home. She explained that someone was harassing her and that she wanted me there for protection. My recollection is that during the month of February, 1992 I went over to her house on two or three occasions at night and stayed in the house with her because she said she was afraid and that someone was harassing her and that her husband was out of town.

4. At the end of February, 1992, I contacted a friend of mine who used to be with the El Paso Police Department, but is now an FBI agent, and I gave him the names, addresses, and dates of birth of Mark Rasmusson and Deborah Rasmusson and asked him to check into them to make sure that there would be no problems with me continuing to work for Deborah Rasmusson. On March 2, 1992 I received a phone call from Mr. Lawrence Frost and he identified himself with the U.S. Customs Service and advised me that he was conducting an investigation into Mark and Deborah Rasmusson and Rasmark Jet Charter and that if I observed anything unusual or illegal that the Rasmusson's were doing that I contact him immediately. I told him that I had not observed anything unusual or illegal and that I was providing primarily bodyguard services for Deborah Rasmusson, but that if anything came up, I would contact him.

5. In the next two and a half months I worked for Deborah Rasmusson approximately an additional five or six times, and again most of the work I did was bodyguard type of work at her residence while her husband was out of town. On one or two occasions I may have gone with her to the Rasmark Jet Charter offices. All of my work from the beginning to the end was a period of three or four hours at a time, and was never for an extended period of time. I was paid $20.00 an hour for all of the bodyguard or security work I did for Deborah Rasmusson.

6. On one occasion Deborah Rasmusson called me over to her house and said there was what appeared to be a bomb in her bedroom. I called the bomb squad of the El Paso Police Department and they came and took the bomb away and told me later that it was a fake bomb.

7. On May 23, 1992, Deborah Rasmusson called me and told me that her husband was trying to kill her and that she was very afraid, and that she had some documents in her possession that would send Mark Rasmusson to the penitentiary. Remembering Agent Lawrence Frost, I called him and relayed what Deborah Rasmusson had told me and he asked me to go by and pick her up and to get Mrs. Rasmusson to meet them. He instructed me where to go to meet them. I went to the Rasmark Jet Charter offices at 6825 Convair, El Paso, Texas 79925 and picked up Deborah Rasmusson, her son, and a box she had in her possession. When I arrived there she was carrying a gun and appeared very frightened. The three of us drove to a Circle K on the corner of Hawkins and Montana and met with U.S. Customs Agent Lawrence Frost and other customs agents and we then went to the customs office on Acer and Viscount here in El Paso, Texas. I do not remember who carried the box from the Rasmark Jet Charter offices to my car, nor who carried the box from my car into the customs office.

8. Once we were all inside the U.S. Customs Office, the agents took her into an interview room and she was separated from me. I did not hear any of the conversation between any U.S. Customs agent and Deborah Rasmusson. We were all at the U.S. Customs Office from three to four hours. Late in the interview I could tell that Deborah Rasmusson was becoming upset because she and Agent Frost began yelling at each other. I could not understand what was being said, I could only hear

yelling back [sic] and forth. When Deborah Rasmusson came out of the interview room she was very upset at everyone, including me. She did not want me to take her home or anywhere else. She and her son left the U.S. Customs Office. I do not remember exactly the details about the box, but I think someone from the U. S Customs Service took the box.

9. All of my actions and employment and dealing with Mark Rasmusson, Deborah Rasmusson and Rasmark Jet Charter terminated as of May 23, 1992. I never had anything to do with any of the Rasmussons or anything to do with their business, and I never provided any additional security or bodyguard services, after May 23, 1992.

10. Sometime during the Summer, 1995 as I was walking out of the El Paso Police Department Headquarters located at 911 N. Raynor, El Paso, Texas 79903, Deborah Rasmusson came up to me and told me that she and her husband had split up and she asked me for my current office telephone number. I gave it to her and a few weeks thereafter she called and advised that she had an alcohol and cocaine problem and she asked me for help. I advised her that I was dealing with kids in a storefront office and could not help her. She asked me to recommend an agency to her and I recommended the Charter Hospital. I have had no further contact of any kind with Deborah Rasmusson since that time. I had no contact with Deborah Rasmusson of any kind from May 23, 1992 until the summer of 1995.

11. I have never been a Sergeant with the El Paso Police Department, and I have never been a member of any narcotics [sic] Task Force as alleged in paragraphs 15 and 19 and elsewhere in Plaintiffs' Second Amended Petition.

12. I never engaged in any conspiracy against either Mark Rasmusson, Deborah Rasmusson or Rasmark Jet Charter as alleged in paragraph 36 and in other locations in Plaintiffs' Second Amended Petition.

13. I never agreed with anyone to engage in any illegal act, and never joined any conspiracy with other individuals as alleged in paragraph 54 and else where in Plaintiffs' Second Amended Petition.

14. I did not give my business pager, and home phone numbers under any false pretenses as alleged in paragraph 55 of Plaintiffs Second Amended Petition.

15. I did not frequently appear at the Rasmark Office, did not question Rasmark's employees, did not stop at the Rasmark residence several times a week, did not send any other police officers to the Rasmusson residence, never borrowed the car nor took the keys of the car of Deborah Rasmusson and never had any copies made of her keys, and never went into the Rasmark Jet Charter office nor the Rasmark residences to look through any files nor take any papers, as alleged in paragraph 56 of Plaintiffs' Second Amended Petition.

16. I never told Deborah Rasmusson that I had any information that Mark Rasmusson was plotting to kill her and I never told her that the man she saw in the window of her residence was Mark Rasmusson as alleged in paragraph 57 of Plaintiffs' Second Amended Petition.

17. I never told Mrs. Rasmusson that I had information that Mark Rasmusson was going to kill her and I never told her to get her gun and I never told that I had a team of people that could and would protect her from Mark Rasmusson as alleged in paragraph 59 of Plaintiffs' Second Amended Petition.

18. I never told Deborah Rasmusson to bring the box of records with her, nor told her that I needed to make a phone call to get the help needed to protect her from Mark Rasmusson as alleged in paragraph 60 of Plaintiffs' Second Amended Petition.

19. I was not present during any conversation between Mrs. Rasmusson and Lawrence Frost as alleged in paragraph 61 of Plaintiffs' Second Amended Petition.

20. I was never working as a "plant" working undercover for Lawrence Frost and was never involved in any type of any illegal conspiracy with any other Defendant as alleged in paragraph 62 of Plaintiffs' Second Amended Petition.

21. I never engaged in any conspiracy and never covered up or kept secret any motive for bringing Mrs. Rasmusson to U.S. Customs Agent Lawrence Frost, nor was I responsible for any of the occurrences that Mrs. Rasmusson was complaining to her husband about, nor have I ever worked with nor assisted EPPD Officers Holland and Graves nor El Paso Sheriff's Officers Baker and Keith nor Agent Frost as alleged in paragraph 67 of Plaintiffs' Second Amended Petition.

22. I did not have a partner on November 10, 1992 that went to the U.S. Customs Inspection Station in Ysleta, Texas who took Mrs. Rasmusson to the East Valley Police Sub-Station, as alleged in paragraph 72 of Plaintiffs' Second Amended Petition.

23. I was in no way involved with the search of or any other activities at the Rasmark offices at 6805 Boeing, nor the Rasmusson residence at 11157 Leo Collins, El Paso, Texas on November 22, 1993, as alleged in paragraph 88 of Plaintiffs' Second Amended Petition.

24. I never employed, interviewed, nor paid any informants to say or do anything in connection with Mark Rasmusson, Deborah Rasmusson, or Rasmark Jet Charter, Inc., as alleged in paragraph 101 of Plaintiffs' Second Amended Petition.

25. I never agreed with any one [sic] to supply false, phoney or other wise bogus information as alleged in paragraph 105 of Plaintiffs' Second Amended Petition.

26. 1 never engaged in any conspiracy to deprive the Plaintiffs' of their clearly established Constitutional Rights as alleged In paragraph 106 of Plaintiffs' Second Amended Petition.

27. I have never actively participated in any conspiracy against the Plaintiffs' as alleged in paragraph 107 of Plaintiffs' Second Amended Complaint.

28. At no time did I engage in any conduct that constituted a deprivation of Plaintiffs' Constitutional and protected rights as alleged in paragraph 108 of Plaintiffs' Second Amended Petition.

29. At no time did I agree with any one [sic] to perform any illegal or unlawful act so as to engage in a conspiracy beginning in 1988 and continuing to the present as alleged in paragraph 109 of Plaintiffs' Second Amended Petition.

30. I at no time carried out any searches or seizures without probable cause or with out a warrant as alleged in paragraph 123 of Plaintiffs' Second Amended Petition.

31. I at no time was acting under the direction or control or were in an illegal conspiracy with any of those individuals alleged in paragraphs 129, 131, and 132 of Plaintiffs' Second Amended Petition.

32. I at no time carried out searches, seizures, arrests and malicious prosecution of Plaintiffs as alleged in paragraph 132 of Plaintiffs' Second Amended Petition.

33. I never undertook any actions at all willfully, wantonly, maliciously or with reckless disregard as alleged in paragraph 134 of Plaintiff's Second Amended Complaint. I at no time engaged in any activity that could be characterized as pattern of racketeering activity continuing from 1989 to the present, nor have obstructed justice nor have I engaged in fraud nor done any of the acts complained of in paragraph 140 of Plaintiffs' Second Amended Petition.

34. I was in no way ever involved in intentionally causing the arrest of Mark B. Rasmusson, in causing an assault upon Deborah Rasmusson, in falsely imprisoning Mark Rasmusson, Deborah Rasmusson or Andrew Gantkessy, never maliciously prosecuted Mark Rasmusson or Deborah Rasmusson, never invaded the privacy nor defamed slandered nor portrayed in a false light, and I never interfered with Plaintiffs' business contracts, all as alleged in paragraph 150 of Plaintiffs' Second Amended Petition.

35. I never was in any way involved in wrongfully carrying out any searches, seizures, arrests, or malicious prosecution of Plaintiffs' as alleged in paragraph 156 of Plaintiffs' Second Amended Petition.

36. All decisions and actions that I took in connection with responding to a telephone harassment complaint made by Mark and Deborah Rasmusson and Rasmark Jet Charter, Inc. , as well as all decisions and actions I took in connection with dealing with Deborah Rasmusson were in [sic] done in accordance with the laws of the State of Texas, as well the United States Constitution. I did not attempt to injure or harm any of the named Plaintiffs in this case in any way. I did not violate any clearly established law of which a reasonable law enforcement officer would have known.

37. All actions I took as outlined above in connection with the Rasmussons and Rasmark Jet Charter, Inc., were discretionary functions that a reasonably prudent peace officer would have taken under the same or similar circumstances. A reasonably prudent peace officer would have taken the same actions that I took in connection with the Rasmussons and Rasmark Jet Charter, Inc. I never took any actions concerning the Rasmussons nor Rasmark Jet Charter with any ill will, bad motive, nor malice in mind. All of my actions taken as set out above were done and taken without malice, and in the good faith belief that all of my actions were proper and legal and that I did not violate any clearly established law of the State of Texas or the of [sic] the United States, or of the Constitution of the State of Texas or the Constitution of the United States of America.

Signed on this the 6th day of June, 1996.

/s/ GEORGE SALAS, Affiant

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned authority, on this the 6th day of June, 1996.

/s/ YVONNE HERNANDEZ
NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS
My commission expires: 7/23/97

[Paragraph numbers added to text]

IN THE UNITED STATES DISTRICT COURT
OR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

MARK B. RASMUSSON, et.al.,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	Cause No.:
	)	EP-95-CA-475-F
LAWRENCE E. FROST, et.al.,	)	
	)	
Defendants.	)	

AFFIDAVIT

STATE OF TEXAS
COUNTY OF EL PASO

1. On this day personally appeared the person known to me to be GEORGE SALAS, who after been duly sworn stated upon his oath as follows:

2. "My name is GEORGE SALAS, and I am over the age of 21 years, and am competent to make an oath. I have personal, first hand knowledge of all facts and matters set out in this affidavit. 1 have been employed by the City of El Paso as a Uniformed Patrolman for the El Paso Police Department since October 28, 1977.

3. On January 14, 1992, while I was working as a Uniformed Patrolman for the El Paso Police Department I was dispatched to 6825 Convair, El Paso, Texas where I spoke to Mark Rasmusson and Debra Rasmusson. They identified themselves to me as the owners of Rasmark Jet Charter, Inc. The reason I was dispatched to their offices is that there

was a threatening phone call on their answering machine. The recording was played for me and it was a threat to kill one or both of them. They told me that they thought they knew who the individual was and they identified the suspect as a Joe Sudomir. They gave me some of the details about their prior dealings with him and why they felt he was the one who had made the threatening phone call. I advised them to be on the look out for this individual and to notify the police department if he was seen and I also advised him to avoid any contact with him. As I was finishing my interview with them Debra Rasmusson asked me for my work telephone number, and I gave it to her.

4. About two weeks after I was dispatched to the offices of Rasmark Jet Charter, Inc., I received a phone call from Mrs. Debra Rasmusson and she asked if I could do private security work for her. She explained that her husband was out of town very frequently and that someone was harassing her and that she wanted to hire me for protection. I told her I was available to do off duty security work, including providing body guard services. A short time after the initial phone call from Debra Rasmusson she called from her of f ice and I went to her of f ice and took her home. She explained that someone was harassing her and that she wanted me there for protection. My recollection is that during the month of February, 1992 I went over to her house on two or three occasions at night and stayed in the house with her because she said she was afraid and that someone was harassing her and that her husband was out of town.

5. At the end of February, 1992, I contacted a friend of mine who used to be with the El Paso Police Department, but is now an FBI agent, and I gave him the names, addresses, and dates of birth of Mark Rasmusson and Debra Rasmusson and asked him to check into them to make sure that there would be no problems with me continuing to work for Debra Rasmusson. On March 2, 1992 I received a phone call from Mr. Lawrence Frost and he identified himself with the U.S. Customs Service and advised me that he was conducting an investigation into Mark and Debra Rasmusson and Rasmark Jet Charter and that if I observed anything unusual or illegal that the Rasmusson's were doing that I contact him immediately. I told him that I had not observed anything unusual or illegal and that I was providing primarily

bodyguard services for Debra Rasmusson, but that if anything came up, I would contact him.

6. In the next two and a half months I worked for Debra Rasmusson approximately an additional five or six times, and again most of the work I did was bodyguard type of work at her residence while her husband was out of town. on one or two occasions I may have gone with her to the Rasmark Jet Charter offices. All of my work from the beginning to the end was a period of three or four hours at a time, and was never for an extended period of time. I was paid $20.00 an hour for all of the bodyguard or security work I did for Deborah Rasmusson.

7. On one occasion Debra Rasmusson called me over to her house and said there was what appeared to be a bomb in her bedroom. I called the bomb squad of the El Paso Police Department and they came and took the bomb away and told me later that it was a fake bomb.

8. On May 23, 1992, Debra Rasmusson called me and told me that her husband was trying to kill her and that she was very afraid, and that she had some documents in her possession that would send Mark Rasmusson to the penitentiary. Remembering Agent Lawrence Frost, I called him and relayed what Debra Rasmusson had told me and he asked me to go by and pick her up and to get Mrs. Rasmusson to meet them. He instructed me where to go to meet them. I went to the Rasmark Jet Charter offices at 6825 Convair, El Paso, Texas 79925 and picked up Debra Rasmusson, her son, and a box she had in her possession. When I arrived there she was carrying a gun and appeared very frightened. The three of us drove to a Circle K on the corner of Hawkins and Montana and met with U.S. Customs Agent Lawrence Frost and other customs agents and we then went to the customs office on Acer and Viscount here in El Paso, Texas. I do not remember who carried the box from the Rasmark Jet Charter offices to my car, nor who carried the box from my car into the customs office.

9. Once we were all inside the U.S. Customs Office, the agents took her into an interview room and she was separated from me. I did not hear any of the conversation between any U.S. Customs agent and Deborah Rasmusson. We were all at the U.S. Customs office from

three to four hours. Late in the interview I could tell that Deborah Rasmusson was becoming upset because she and Agent Frost began yelling at each other. I could not understand what was being said, I could only hear yelling back and forth. When Debra Rasmusson came out of the interview room she was very upset at everyone, including me. She did not want me tc take her home or anywhere else. She and her son left the U.S Customs Office. I do not remember exactly the details about the box, but I think someone from the U.S Customs Service took the box.

10. All of my actions and employment and dealing with Mark Rasmusson, Debra Rasmusson and Rasmark Jet Charter terminated as of May 23, 1992. I never had anything to do with any of the Rasmussons or anything to do with their business, and I never provided any additional security or bodyguard services, after May 23, 1992.

11. Sometime during the Summer, 1995 as I was walking out of the El Paso Police Department Headquarters located at 911 N. Raynor, El Paso, Texas 79903, Debra Rasmusson came up to me and told me that she and her husband had split up and she asked me for my current office telephone number. I gave it to her and a few weeks thereafter she called and advised that she had an alcohol and cocaine problem and she asked me for help. I advised her that I was dealing with kids in a storefront office and could not help her. She asked me to recommend an agency to her and I recommended the Charter Hospital. I have had no further contact of any kind with Deborah Rasmusson since that time. I had no contact with Deborah Rasmusson of any kind from May 23, 1992 until the summer of 1995.

12. I have never been a member of the U.S. Customs Financial Task Force as alleged in Plaintiffs' Third Amended original Petition.

13. I never engaged in any conspiracy against Mark Rasmusson, Debra Rasmusson or Rasmark Jet Charter as alleged in Plaintiffs, Third Amended Original Petition.

14. I never agreed with anyone to engage in any illegal act,

and never joined any conspiracy with any other individuals as alleged in Plaintiffs' Third Amended Original Petition.

15. I did not give my business pager, and home phone numbers under any false pretenses as alleged in Plaintiffs Third Amended Original Petition.

16. I did not frequently appear at the Rasmark Office, did not question Rasmark's employees, did not stop at the Rasmark residence several times a week, did not send any other police officers to the Rasmusson residence, never borrowed the car nor took the keys of the car of Debra Rasmusson and never had any copies made of her keys, and never went into the Rasmark Jet Charter office nor the Rasmark residences to look through any files nor take any papers, as alleged in Plaintiffs' Third Amended original Petition.

17. I never told Debra Rasmusson that I had any information that Mark Rasmusson was plotting to kill her and I never told her that the man she saw in the window of her residence was Mark Rasmusson as alleged in Plaintiffs' Third Amended Original Petition.

18. I never told Mrs. Rasmusson that I had information that Mark Rasmusson was going to kill her and I never told her to get her gun and I never told that I had a team of people that could and would protect her from Mark Rasmusson as alleged in Plaintiffs' Third Amended Original Petition.

19. I never told Debra Rasmusson to bring the box of records with her, nor told her that I needed to make a phone call to get the help needed to protect her from Mark Rasmusson as alleged in Plaintiffs' Third Amended Original Petition.

20. I was not present during any conversation between Mrs. Rasmusson and Lawrence Frost as alleged in Plaintiffs' Third Amended Petition.

21. I was never working as a plant working undercover for Lawrence Frost or the U.S. Custom Task Financial Task Force and was

never involved in any type of any illegal conspiracy with any other Defendant as alleged in Plaintiffs' Third Amended Original Petition.

22. I never engaged in any conspiracy and never covered up or kept secret any motive for bringing Mrs. Rasmusson to U.S. Customs Agent Lawrence Frost, nor was I responsible for any of the occurrences that Mrs. Rasmusson was complaining to her husband about, nor have I ever worked with nor assisted EPPD Officers James Holland alleged in Plaintiffs' Third Amended Original Petition.

23. I did not have a partner on November 10, 1992 that went to the U.S. Customs Inspection Station in Ysleta, Texas who took Mrs. Rasmusson to the East Valley Police Sub-Station, as alleged in Plaintiffs' Third Amended Original Petition.

24. I was in no way involved with the search of or any other activities at the Rasmark Offices at 6805 Boeing, nor the Rasmusson residence at 11157 Leo Collins, El Paso, Texas on November 22, 1993, as alleged in Plaintiffs' Third Amended Original Petition.

25. I never employed by nor a member of the U. S. Customs Financial Task Force alleged in Plaintiffs' Third Amended Original Petition.

26. I never agreed with any one to supply false, phoney or other wise bogus information as alleged in Plaintiffs' Third Amended Original Petition.

27. I never engaged in any conspiracy to deprive the Plaintiffs' of their clearly established Constitutional Rights as alleged in Plaintiffs' Third Amended Original Petition.

28. I have never actively participated in any conspiracy against the Plaintiffs' as alleged in Plaintiffs' Third Amended Original Petition.

29. At no time did I engage in any conduct that constituted a deprivation of Plaintiffs, Constitutional and protected rights as alleged

in Plaintiffs' Third Amended Original Petition.

30. At no time did I agree with any one [sic] to perform any illegal or unlawful act so as to engage in a conspiracy beginning in 1987 and continuing to the present as alleged in Plaintiffs' Third Amended Original Petition.

31. I at no time carried out any searches or seizures or arrests without probable cause or with out [sic] a warrant against Plaintiffs as alleged in Plaintiffs' Third Amended Original Petition.

32. I at no time was acting under the direction or control or were [sic] in an illegal conspiracy with any of those individuals alleged in Plaintiffs' Third Amended Original Petition.

33. I never undertook any actions at all willfully, wantonly, maliciously or with reckless disregard as alleged in Plaintiff's Third Amended Original Petition.

34. I never was in any way involved in wrongfully carrying out any retaliation, harassment, intimidation, searches, seizures, or arrests, of Plaintiffs' as alleged in Plaintiffs' Third Amended Original Petition.

35. All decisions and actions that I took in connection with responding to a telephone harassment complaint made by Mark and Deborah Rasmusson and Rasmark Jet Charter, Inc., as well as all decisions and actions I took in connection with dealing with Deborah Rasmusson were in done in accordance with the laws of the State of Texas, as well the United States Constitution. I did not attempt to injure or harm any of the named Plaintiffs in this case in any way. I did not violate any clearly established law of which a reasonable law enforcement officer would have known.

36. All actions I took as outlined above in connection with Mark Rasmusson, Debra Rasmusson and Rasmark Jet Charter, Inc. , were discretionary functions that a reasonably prudent peace officer would have taken under the same or similar circumstances. A

reasonably prudent peace officer would have taken the same actions that I took in connection with the Mark Rasmusson, Debra Rasmusson and Rasmark Jet Charter, Inc.

37. I never took any actions concerning Mark Rasmusson, Debra Rasmusson or Rasmark Jet Charter with any ill will, bad motive, nor malice in mind. All of my actions taken as set out above were done and taken without malice, and in the good faith belief that all of my actions were proper and legal and that I did not violate any clearly established law of the State of Texas or the of the United States, or of the Constitution of the State of Texas or the Constitution of the United States of America.

Signed on this the 27th day of March, 1997.

/s/ George Salas, Affiant

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned authority, on this the 27th day of March, 1997.

/s/ Yvonne Hernandez
NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS
My commission expires: 7-23-97

GEORGE SALAS' RESPONSE TO PLAINTIFFS' FIRST REQUEST FOR ADMISSIONS

1. Admit that on May 23, 1992 11 ... Remembering Agent Lawrence Frost, I called him and relayed what Deborah Rasmusson had told me and he asked me to go by and pick her up and to get Mrs. Rasmusson to meet them. He instructed me where to go to meet them."

RESPONSE: Admit.

2. Admit that on March 2, 1992 you told FROST that you understood that Deborah Rasmusson was of interest to the Customs Service.

RESPONSE: Deny.

3. Admit that on May 23, 1992 you took Mrs. Rasmusson, her son Ian Maye and a box of Rasmark records to the of f ice of FROST located on Viscount Street.

RESPONSE: Admit.

4. Admit that at the time of the meeting on May 23, 1992 with FROST, you pointed to a brown cardboard file box, bearing a handwritten notation, 112 of 18", which belonged to Deborah Rasmusson and Rasmark Jet Charter, Inc.

RESPONSE: Defendant can neither admit nor deny this request for admission because he can not remember. Therefore, Defendant denies this request.

5. Admit that during the meeting on May 23, 1992 with FROST you told FROST that Deborah Rasmusson brought evidentiary records with her.

RESPONSE: Admit.

6. Admit that during the meeting on May 23, 1992 with FROST you told him that the brown cardboard file box, bearing a handwritten notation, 112 of 1811, contained evidence.

RESPONSE: Admit.

7. Admit that you know El Paso Police Department Senior Detective James Holland.

RESPONSE: Admit.

8. Admit that you have discussed either Deborah Rasmusson, Mark Rasmusson or Rasmark Jet Charter, Inc. with Detective James Holland.

RESPONSE: Admit.

9. Admit that on November 10, 1993 you told Senior Detective James Holland of the El Paso Police Department that the box of records which were seized from Deborah Rasmusson, on or about May 23, 1992, had been with Deborah Rasmusson at the office of Rasmark Jet Charter, 6805 Boeing Drive, El Paso, Texas when you picked her up.

RESPONSE: Admit.

10. Admit that you worked during the period from January 1992 to May 23, 1992 for Deborah and Mark Rasmusson as a security and body guard for $20.00 per hour.

RESPONSE: Defendant admits that sometime in either late January, 1992 or early February, 1992 he did work for Deborah Rasmusson until May 23, 1992.

11. Admit that you had a duty to treat Mark B. Rasmusson, Deborah Rasmusson, and Rasmark Jet Charter, Inc. or Rasmark Air in accordance with the regulations, policies and standards of the El Paso

Police Department.

RESPONSE: Admit.

12. Admit that El Paso Police Department worked with FROST in carrying out investigations of Mark B. Rasmusson, Deborah Rasmusson and Rasmark Jet Charter, Inc.

RESPONSE: Defendant can neither admit nor deny this request because he has no idea whether the El Paso Police Department worked with Frost in carrying out Investigations of Mark B. Rasmusson, Deborah Rasmusson, and Rasmark Jet Charter, Inc., and therefore denies the same.

13. Admit that on one occasion Deborah Rasmusson called you over to her house and said there was what appeared to be a bomb in her bedroom, you called the bomb squad of the El Paso Police Department and they came and took the bomb away and told you later that it was a fake bomb.

RESPONSE: Admit.

14. Admit that on January 14, 1992, while working as a uniformed Patrolman for the El Paso Police Department, you were dispatched to 6825 Convair, El Paso, Texas where you spoke to Mark Rasmusson and Deborah Rasmusson pertaining to a death threat that they had received on their office answering machine.

RESPONSE: Admit.

15. Admit that on January 14, 1992 the telephone recording, referred to in Request for Admission 18, was played for you and it was a threat to kill one or both of the. Rasmussons.

RESPONSE: Admit

16. Admit that on January 14, 1992 the Rasmussons gave you

some of the details about their prior dealings with Joe Sudomir.

RESPONSE: Admit.

17. Admit that on January 14, 1992 you advised the Rasmussons to be on the look out for Joe Sudomir and to notify the police department if he was seen and you also advised Mr. Rasmusson to avoid any contact with him.

RESPONSE: Admit.

18. Admit that during the month of February, 1992 you went over to Deborah Rasmusson's house on two or three occasions at night and stayed in the house with her because she said she was afraid and that someone was harassing her and that her [husband] was out of town.

RESPONSE: Admit.

19. Admit that at the end of February, 1992 you contacted a friend of yours who used to be with the El Paso Police Department but is now an FBI agent and gave him the names, addresses, and dates of birth of Mark Rasmusson, and Deborah Rasmusson and asked him to check into them to make sure that there would be no problems with you continuing to work for Deborah Rasmusson.

RESPONSE: Admit.

20. Admit that on March 2, 1992 you received a phone call from FROST and "he identified himself with the U.S. Customs service and advised me that he was conducting an investigation into Mark and Deborah Rasmusson and Rasmark Jet Charter and that if I observed anything unusual or illegal that the Rasmussons' were doing that I contact him immediately. I told him that I had not observed anything unusual or illegal and that I was providing primarily bodyguard services for Deborah Rasmusson, but that if anything came up, I would contact him."

RESPONSE: Admit. [End of Document]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

MARK B. RASMUSSON, ET AL.,	)	
	)	
Plaintiffs,	)	
	)	
V.	)	CIVIL ACTION NO.
	)	EP-95-CA-475-F
LAWRENCE E. FROST, EL AL.,	)	
	)	
Defendants.	)	

DECLARATION OF FONDA HIVICK

"Under the provision of 28 U.S.C. Section 1746, I, Fonda Hivick, do hereby make the following unsworn declaration, under penalty of perjury, pertinent to the above-styled and numbered cause.

I.

I have read Plaintiffs' Second Amended Original Petition. At all times material to the above-captioned case, I was employed as an Internal Revenue Service Special Agent, with the Criminal Investigation Division, Internal Revenue Service, Austin District, Austin, Texas.

II.

My duties while assigned to the Criminal Investigation Division at the El Paso post of duty included the identification and evaluation of prosecution potential of individuals suspected of violations of federal law over which the Internal Revenue Service has investigative authority and the planning and conducting of those investigations utilizing various investigative techniques such as

interviewing, surveillance and execution of search warrants.

III.

At all times material to the above-captioned case, I was on duty at the Internal Revenue Service office, El Paso, Texas and my actions in connection with the plaintiff, which are described below, were taken under color of office, in good faith, upon reasonable grounds, and in pursuance of my official duties as an Internal Revenue Service Special Agent.

IV.

I have no personal knowledge of the allegations made against Mark Rasmusson in United States of America v. Jesus Armando Flores, Luis Ascension Roybal, Mark Rasmusson [emphasis in original], EP-90-CR-258-H, because I did not participate in that investigation.

V.

On or about April 1992 through February 1993 I was assigned to work with the United States Customs Service (USCS) on an Organized Crime Drug Enforcement Task Force (OCDETF). This investigation focused on alleged money laundering between Mexico and the United States. This investigation took many directions, one of which led to Mark Rasmusson and Rasmark Jet Charter.

VI.

On May 27, 1992, I was present when USCS Special Agent Frost opened the box of records obtained from Debra Rasmusson pursuant to a search warrant. I prepared an inventory of items found in the box and gave it to Special Agent Frost.

VII.

On June 11, 1992, I made a cursory examination of the

records but prepared no work papers.

VIII.

On August 20, 1992, I conducted a brief surveillance of Rasmark Jet Charter and made notes of my observations.

IX.

On August 24, 1992, and August 26, 1992, I retrieved information from the Treasury Enforcement Communication System (TECS) concerning international flights made by Rasmark Jet Charter aircraft.

X.

On December 8, 1992, USCS Special Agent Jimmy Searls and I interviewed Mark Rasmusson at his office concerning a round trip charter flight to the Cayman Islands. The purpose of the interview was to learn the manner and amount of payment made by the persons who hired Rasmark Jet Charter and also what knowledge Mark Rasmusson had of their activities while in the Cayman Islands. Mark Rasmusson verbally gave us the information we sought and said that he would look for the invoice on that trip.

XI.

On June 8, 1993, I was at the United States Attorney's Office in the United States Courthouse, El Paso, Texas, debriefing an individual pursuant to a proposed plea agreement. I have no recollection of having ever gone to State National Bank in the company of USCS Special Agent Frost and IRS-CID Special Agent Robert Martinez. I have never stated to anyone that Rasmark is a front corporation for money laundering or that Mark Rasmusson is a known cocaine dealer.

XII.

On November 22, 1993, I was assigned to the search team during the execution of a search warrant at Rasmark Jet Charter. I was one of approximately three agents who searched Mark Rasmusson's office at Rasmark Jet Charter. I identified items that I believed complied with the description of items to be seized on the search warrant. Those items were given to USCS.

XIII.

No other contacts in person, in writing, or otherwise took place between the plaintiffs and myself, to the best of my knowledge and records.

I declare under penalty of perjury, that the foregoing is true and correct tot the best of my knowledge. Executed on the 14th Day of June, 1996.

/s/ Fonda Rose Hivick
Special Agent
Internal Revenue Service - Criminal
Investigation Division

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

MARK B. RASMUSSON, ET AL.,	)	
	)	
Plaintiffs,	)	
	)	
	)	CIVIL ACTION NO
	)	
LAWRENCE E. FROST, ET AL.	)	EP-95-CA-475-F
	)	
Defendants	)	

DECLARATION OF FRED J. SCHROEDER

1. I, Fred J. Schroeder, am a Senior Special Agent, U.S. Customs Service, Office of Investigations, El Paso, Texas, and have been employed as an investigator in that office since May 1987.

2. From January 1993 to February 1994, I was assigned to the El Paso Financial Task Force under the direction of Senior Special Agent Lawrence E. Frost, the Lead Agent for the Task Force.

3. While assigned to the Task Force, I was the Team Leader for the Rasmusson portion of the larger money laundering investigation. This team consisted of two El Paso County Deputy Sheriffs, one El Paso Police Department Officer, and one FBI Special Agent. During the 13 months I was a Team Leader in the Task Force, we conducted surveillance at the residence of Mr. and Mrs. Rasmusson, 11157 Leo Collins, El Paso, Texas, which included the retrieval of the residence trash. The team also conducted surveillance at the Rasmark Jet Charter, Inc., business office, El Paso International Airport. The team conducted interviews of former employees and acquaintances, business associates and other persons associated with Mark B. Rasmusson and Deborah L. Rasmusson.

4. I supervised the search of the residence at 11157 Leo Collins, El Paso, Texas, pursuant to a judicially issued search warrant and wrote approximately 98 reports during the course of my involvement with this investigation. Such reports covered the retrieval of the residence trash, surveillance of the residence and business location of Rasmark Jet Charter, Inc., documentation of confidential informants, and various interviews during the course of my investigation. All aspects of the investigation were coordinated with the Lead Agent, Lawrence E. Frost.

5. I have not supplied, nor to my knowledge has any member of the Financial Task Force ever supplied any false information. Further, I have never met or talked with Joseph Sudomir.

6. I have no knowledge of any harassment of Rasmark pilots at Brownsville, Texas on or about October 6, 1988, or of a posted "RED LIST LOOKOUT".

7. I have interviewed Chris Hines during the course of my investigation with the Task Force and documented this interview in a report of investigation. I have no knowledge that any of this information was false or misleading. I met Gail Beach during the course of my investigation with the Task Force, however, I did not receive any information that required a written report to be prepared. She was never a documented source of information. Also, I have never met or talked with Joe Teuchert.

8. On May 23, 1992, I was contacted by the Currency Group Supervisor, Michael Wilczewski, to assist in a consent search of the Rasmark office building. The search was called off and I then reported to the Joffice of Investigations, located at 9400 Viscount, El Paso, Texas. Upon arrival I met with Special Agents Eric Mills and Richard Johnson in front of the building. Agent Mills told me that the building fire alarm had been activated, and I observed Mrs. Rasmusson's son, Ian, seated in front of the building. Ian stated to Agent Mills that he did not understand what was going on, that "all the evidence needed is right here in this box." On the ground in front of Ian was a cardboard box. After Agent Lawrence Frost and Mrs. Rasmusson came out of the

building, Agent Frost told Ian and Mrs. Rasmusson that they could leave. After they walked away, I told Agent Frost what Ian had said about the box containing evidence. Agents Frost and Mills then left to ask Mrs. Rasmusson if they could have the box. A short time later Agent Frost contacted the Sector Communications office, reporting that a police unit was needed and that Ian had assaulted Agent Mills. I responded to the Diamond Shamrock convenience store located a short distance away and Agent Johnson and myself put Ian in the back seat of a Government vehicle. Ian stated he did not understand why he was being treated that way and I tried to explain the seriousness of assaulting an officer. Ian then voluntarily told me that his mother had brought the evidence because they thought his stepfather was trying to kill his mother. He further stated that his stepfather had sold his mother's half of the business and that his stepfather changed his will leaving him (Ian) and his sisters out of the will in the event of his mother's death. After the police arrived, Ian was released and left with his mother, Mrs. Rasmusson.

9. I have no knowledge of any information being given to State National Bank officials to the effect that Rasmark was a mere front corporation for money laundering or that Mark B. Rasmusson was a known cocaine dealer.

10. On June 2, 1993, the Financial Task Force contacted Andrew Gantkessy, an employee of Favesa, a subsidiary of Ford Motor Company, and he agreed to an interview at his office, 15 Leigh Fisher Drive, El Paso, Texas. Mr. Gantkessy was interviewed for a short time by myself, Special Agents Lawrence Frost, Larry Brown, FBI Special Agent Joseph Acosta, and El Paso Police Department, Detective James Holland. Mr. Gantkessy agreed to talk with us and was never prevented from leaving the room. On June 3, 1993, Mr. Gantkessy voluntarily came to my office at 9400 Viscount, El Paso, Texas, to continue the interview. Several days later, Mr. Gantkessy refused to see me again because he said his doctor told him he did not have too. I did not tell Mr. Gantkessy that he would be placed in jail if he did not cooperate or refused to talk with myself other United States Customs Service agents. I have not talked to Mr. Gantkessy since June 1993.

11. I have no knowledge of any discussions between Mr. Gantkessy and his employers at Ford Motor Company or reasons Mr. Gantkessy left the company.

12. On November 22, 1993, I supervised the execution of a judicially issued search warrant of the residence of Mark B. Rasmusson and Deborah L. Rasmusson at 11157 Leo Collins, El Paso, Texas. No forced entry was made. Mrs. Rasmusson permitted entry by the participating officers, and an orderly and professional search was conducted. All of the property taken was tagged and shown to Mrs. Rasmusson before it was removed from the premises. I believe that when I entered the residence I asked Mrs. Rasmusson if there were any guns in the residence and she replied that there were not and that the gun safe was open. I am not aware of any missing records or property.

13. I have no knowledge of any false, misleading, or unreliable information in the affidavits supporting the search warrants of the residence at 11157 Leo Collins or the business office of Rasmark Jet Charter, Inc.

14. I did not participate in the execution of the judicially issued search on the business office of Rasmark Jet Charter, Inc., on November 22, 1993.

15. I participated in the retrieval of the trash at the residence of Mrs. Rasmusson by having the El Paso Sanitation Department turn it over to me or other members of the Task Force. The description of the documentation retrieved is accurate and I know of no covert and warrantless entry into the residence of Mrs. Rasmusson to obtain additional evidence.

16. I have no knowledge of any interference by any member of the Task Force in contract negotiations between Rasmark and Ford Motor Company.

17. I have no knowledge of any threats against Mrs. Rasmusson or an attack upon Mrs. Rasmusson and her son Ian while they were at a stoplight in January 1994.

18. I have no knowledge of any Texas Commerce Bank official being told to the effect that Rasmark was a front for drug money laundering or that Mark B. Rasmusson was a drug dealer.

19. I am unaware of any unreliable information furnished during the investigation of Rasmark and Mark B. Rasmusson or the payment of huge sums of money for information furnished. I only paid one informant the sum of $200 during the course of the investigation, and it was for information not directly related to the Rasmussons. I do not know what the term "past posting informant information" means or has reference too.

20. I was neither involved in nor do I have any personal knowledge of the remaining allegations contained in the Plaintiffs' Second Amended Petition.

21. I declare under penalty of perjury that the foregoing statements are true an correct.

July 30, 1996
Date

/s/ Fred J. Schroeder
Senior Special Agent
U.S. Customs Service

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

MARK B. RASMUSSON, ET AL.,	)	
	)	
Plaintiffs,	)	
	)	
V.	)	CIVIL ACTION NO
	)	
	)	EP-95CA-475-F
LAWRENCE E. FROST, ET AL.,	)	
	)	
Defendants.	)	

DECLARATION OF FRED J. SCHROEDER

1. I, Fred J. Schroeder, am a Senior Special Agent, U.S. Customs Service, Office of Investigations, El Paso, Texas, and have been employed as an investigator in that office since May 1987.

2. From January 1993 to February 1994, I was assigned to the El Paso Financial Task Force under the direction of Senior Special Agent Lawrence E. Frost, the Lead Agent for the Task Force.

3. While assigned to the Task Force, I was the Team Leader for the Rasmusson portion of the larger money laundering investigation. This team consisted of two El Paso County Deputy Sheriffs, one El Paso Police Department Officer, and one FBI Special Agent. During the 13 months I was a Team Leader in the Task Force, we conducted surveillance at the residence of Mr. and Mrs. Rasmusson, 11157 Leo Collins, El Paso, Texas, which included the retrieval of the residence trash. The team also conducted surveillance at the Rasmark Jet Charter, Inc., business office, El Paso International Airport. The team conducted interviews of former employees and acquaintances, business associates and other persons associated with Mark B. Rasmusson and Deborah L. Rasmusson.

4. I supervised the search of the residence at 11157 Leo Collins, El Paso, Texas, pursuant to a judicially issued search warrant and wrote approximately 98 reports during the course of my involvement with this investigation. Such reports covered the retrieval of the residence trash, surveillance of the residence and business location of Rasmark Jet Charter, Inc., documentation of confidential informants, and various interviews during the course of my investigation. All aspects of the investigation were coordinated with the Lead Agent, Lawrence E. Frost.

5. I have not supplied, nor to my knowledge has any member of the Financial Task Force ever supplied any false information.

6. I have no knowledge of any harassment of Rasmark pilots at Brownsville, Texas on or about October 6, 1988.

7. I have interviewed Chris Hines during the course of my investigation with the Task Force and documented this interview in a report of investigation. I have no knowledge that any of this information was false or misleading. I met Gail Beach during the course of my investigation with the Task Force, however, I did not receive any information that required a written report to be prepared. She was never a documented source of information.

8. On May 23, 1992, I was contacted by the Currency Group Supervisor, Michael Wilczewski, to assist in a consent search of the Rasmark office building. The search was called off and I then reported to the office of Investigations, located at 9400 Viscount, El Paso, Texas. Upon arrival I met with Special Agents Eric Mills and Richard Johnson in front of the building. Agent Mills told me that the building fire alarm had been activated, and I observed Mrs. Rasmusson's son, Ian, seated in front of the building. Ian stated to Agent Mills that he did not understand what was going on, that "all the evidence needed is right here in this box." On the ground in front of Ian was a cardboard box. After Agent Lawrence Frost and Mrs. Rasmusson came out of the building, Agent Frost told Ian and Mrs. Rasmusson that they could leave. After they walked away, I told Agent Frost what Ian had said about the box containing evidence. Agents Frost and Mills then left to

ask Mrs. Rasmusson if they could have the box. A short time later Agent Frost contacted the Sector Communications office, reporting that a police unit was needed and that Ian had assaulted Agent Mills. I responded to the Diamond Shamrock convenience store located a short distance away and Agent Johnson and myself put Ian in the back seat of a Government vehicle. Ian stated he did not understand why he was being treated that way and I tried to explain the seriousness of assaulting an officer. Ian then voluntarily told me that his mother had brought the evidence because they thought his stepfather was trying to kill his mother. He further stated that his stepfather had sold his mother's half of the business and that his stepfather changed his will leaving him (Ian) and his sisters out of the will in the event of his mother's death. After the police arrived, Ian was released and left with his mother, Mrs. Rasmusson.

9. I have no knowledge of any information being given to any Bank official pertaining to any of the Plaintiffs.

10. On June 2, 1993, the Financial Task Force contacted Andrew Gantkessy, an employee of Favesa, a subsidiary of Ford Motor Company, and he agreed to an interview at his office, 15 Leigh Fisher Drive, El Paso, Texas. Mr. Gantkessy was interviewed for a short time by myself, Special Agents Lawrence Frost, Larry Brown, FBI Special Agent Joseph Acosta, and El Paso Police Department, Detective James Holland. Mr. Gantkessy agreed to talk with us and was never prevented from leaving the room. On June 3, 1993, Mr. Gantkessy voluntarily came to my office at 9400 Viscount, El Paso, Texas, to continue the interview. Several days later, Mr. Gantkessy refused to see me again because he said his doctor told him he did not have too. I did not tell Mr. Gantkessy that he would be placed in jail if he did not cooperate or refused to talk with myself other United States Customs Service agents. I never threatened or attempted to coerce Mr. Gantkessy in talking with me. I have not talked to Mr. Gantkessy since June 1993.

11. I have no knowledge of any discussions between Mr. Gantkessy and his employers at Ford Motor Company or reasons Mr. Gantkessy left the company.

12. Andrew GANTKESSY was never forced, coerced nor threatened to do or say anything by myself, nor am I aware of any other member of the FTF having threatened, coerced or forced GANTKESSY to do anything. GANTKESSY never told me, nor anyone else involved in this investigation, that he had won flights on RASMARK aircraft in a raffle.

13. Andrew GANTKESSY never asked to speak to an attorney when I interviewed him.

14. I know nothing about a RASMARK aircraft being stopped and searched in Indianapolis, Indiana.

15. I, nor anyone involved in the investigation of the plaintiffs, coerced Fjord Motor Company to do anything.

16. On November 22, 1993, I supervised the execution of a judicially issued search warrant of the residence of Mark B. Rasmusson and Deborah L. Rasmusson at 11157 Leo Collins, El Paso, Texas. No forced entry was made. Mrs. Rasmusson permitted entry by the participating officers, and an orderly and professional search was conducted. All of the property taken was tagged and shown to Mrs. Rasmusson before it was removed from the premises. I believe that when I entered the residence I asked Mrs. Rasmusson if there were any guns in the residence and she replied that there were not and that the gun safe was open. I am not aware of any missing records or property. It should be noted that Lue Jackson, Larry Harrell, Dante Orante, C.W. Moore, Cynthia Mandujan and Daniel Ramirez were in no way involved in the execution of this search warrant.

17. I have no knowledge of any false, misleading, or unreliable information in the affidavits supporting the search warrants of the residence at 11157 Leo Collins or the business office of Rasmark Jet Charter, Inc.

18. I did not participate in the execution of the judicially issued search warrant on the business office of Rasmark Jet Charter, Inc., on November 22, 1993.

19. I participated in the retrieval of the trash at the residence of Mrs. Rasmusson by having the El Paso Sanitation Department turn it over to me or other members of the Task Force. The description of the documentation retrieved is accurate and I know of no covert and warrantless entry into the residence of Mrs. Rasmusson to obtain additional evidence. Further more to my knowledge all evidence seized by the FTF was maintained in a proper chain of custody. Special Agents and Police Officers assigned to the FTF followed all pertinent laws and regulations as well as specific agency guidelines relating to obtaining the trash from the RASMUSSON residence.

20. I have no knowledge of any interference by any member of the Task Force in contract negotiations between Rasmark and Ford Motor Company.

21. I am unaware of any unreliable information furnished during the investigation of Rasmark and Mark B. Rasmusson or the payment of huge sums of money for information furnished.

22. The only involvement I had in the Jesus Flores investigation was that I conducted some night-time surveillance and I assisted during two search warrants, neither of which involved any of the Plaintiffs.

23. I was not present during the Border Search of Deborah Rasmusson car on November 10, 1992.

24. I have never entered into an agreement with anyone nor am I aware of anyone having an agreement, "the goal of which was to steal the assets of RASMARK".

25. I have never participated in nor am I aware of any "bogus investigations" nor "sham prosecutions".

26. I have never implemented nor participated in a plan to "shut down RASMARK by carrying out a pattern of harassment, intimidation, coercion and retaliation against the Plaintiffs".

27. I have never participated in, directed, nor am I ware of any strip searches of any RASMARK passengers nor crew members.

28. I have never, nor am I aware of any other officer, "setting out to manufacture by harassment, intimidation, coercion and retaliation" any evidence or facts in any case, specifically including the investigation activities carried out in relation to the RASMUSONs and Andrew GANTKESSY.

29. El Paso Police Officer Salas was never a member of the FTF neither officially nor "unofficially" and the association of the Task Force with him was limited.

30. I have never individually nor in concert with any other person, acted for the "expressed purpose of ruining Mark RASMUSSON, Deborah RASMUSSON, RASMARK, and Andrew GANTKESSY.

31. I have never, nor am I aware of anyone else, ever asking GANTKESSY to cooperate in "wire tapping" nor "fabricating lies against the RASMUSSONs and RASMARK".

32. I have never participated in, nor approved, of a plan to continue any "unlawful investigation" nor am I aware of any such action by any other person.

33. I have never been a part of any "plan", nor am I aware of any other person, being involved in a "plan" to disrupt the business relationship between the Plaintiffs and Ford Motor Company.

34. I have not, nor am I aware of any other law enforcement officer nor person acting as an agent of a law enforcement officer, having entered the RASMUSSON residence or RASMARK office unlawfully.

35. At no time did I, nor anyone I am aware of, covertly enter the RASMUSSON residence.

36. In reference to Count I of the plaintiffs First Cause of Action, I have never engaged in the violation of the plaintiffs rights nor in any cover-up of any conspiratorial acts. Additionally, I have never been a part of, nor am I aware of the existence of any conspiracy to deprive the plaintiffs of their constitutional rights.

37. I have never engaged individually, nor in concert with any other person, in a pattern of harassment, intimidation, and retaliation against plaintiffs, as a part of an alleged conspiracy to steal the assets of Mark and Deborah RASMUSSON.

38. In reference to Count VIII, Eighth Cause of Action, of the plaintiffs complaint, as previously stated I have never been a member of, nor am I aware of the existence of, any conspiracy against the plaintiffs.

39. The plaintiffs have alleged the existence of a "Plan A, B, and C". What the plaintiffs refer to an "Plan A" is commonly referred to by Federal Agents as a "criminal investigation". I am not aware of, nor have I ever heard of, what the plaintiffs refer to as "Plan B nor C".

40. All of my actions during the investigation of the Plaintiffs were done in good faith and within the course and scope of my federal employment.

41. I declare under penalty of perjury that the foregoing statements are true and correct.

04-02-97
Date

/s/ Fred J. Schroeder
Senior Special Agent

[Paragraph numbers added to text]

AFFIDAVIT OF FRED SCHROEDER

STATE OF TEXAS §
COUNTY OF EL PASO §

1. BEFORE ME, the undersigned authority on this day personally appeared FRED SCHROEDER, known to me to be the person whose signature is subscribed below and after being duly sworn did upon oath depose and state the following:

2. My name is FRED SCHROEDER. I am over the age of 18 and am fully competent to make this affidavit. I hereby state that I have personal knowledge of the facts stated herein and that these facts are true and correct.

3. I am employed as a Special Agent by the United States Department of the Treasury, U.S. Customs Service. In 1993, 1 was involved in an investigation regarding Plaintiffs Mark Rasmusson and Deborah Rasmusson. In connection with this investigation I interviewed CHRIS HINES once on March 16, 1993, in El Paso, Texas. The contents of the matters discussed in such interview were reduced to writing and have been previously produced to the Plaintiffs in this litigation.

4. After March 9, 1993, 1 recall telephonically contacting CHRIS HINES approximately five to six times to clarify details previously discussed. I had no further contact with CHRIS HINES after July, 1993. 1 have reviewed the records maintained by my Agency concerning Mark Rasmusson and Deborah Rasmusson and have not located any records which indicate CHRIS HINES made any statements, or supplied any information to the United States Customs Service regarding Mark Rasmusson or Deborah Rasmusson, or the matters

alleged by such Plaintiffs in this litigation, after July, 1993.

Further, Affiant sayeth naught."

/s/ FRED SCHROEDER

SWORN AND SUBSCRIBED TO BEFORE ME the undersigned authority on this 1st day of April, 1997.

/s/ Margaret M. Aguirre
Notary Public in and for
State of Texas
My Commission Expires 8-23-97

[Paragraph numbers added to text]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

MARK A. RASMUSSON, et.al.,	}	
	}	
Plaintiffs,	}	
	}	
vs.	}	Cause No.: EP-95-CA-475-F
LAWRENCE E.. FROST, et.al.,	}	
	}	
Defendants.	}	

AFFIDAVIT

STATE OF TEXAS }
COUNTY OF EL PASO }

On this day personally appeared the person known to me to be JAMES HOLLAND, who after been duly sworn stated upon his oath as follows:

1. "My name is JAMES HOLLAND, and I am over the age of 21 years, and am competent to make an oath. I have personal, first hand knowledge of all facts and matters set out In this affidavit. I have been employed by the City of El Paso as a commissioned peace officer for the El Paso Police Department since January 6, 1972.

2. From January, 1993, until April, 1995, 1 was assigned to the United States Customs-Service Financial Task Force. As part of my duties with the United States Customs Financial Task Force, I assisted in the Investigation of Mark B. Rasmusson, Deborah Rasmusson and Rasmark Jet Charter, Inc. Attached to Plaintiffs' Second Amended Original Petition as Exhibit "5" is a copy of a. twenty six page sworn affidavit of Lawrence E. Frost, dated November 19, 1993. All actions

and decisions I took in connection with the activities attributed to me that occurred on February 12, 1993, March 1, 1993, March 16, 1993, April 20, 1993, May 13, 1993, June 2, 1993, June 17, 1993, June 28, 1993, November 4, 1993, November 10, 1993, as well as the execution of the search warrant at the offices of Rasmark on November 22, 1993, were all decisions and actions that I took in my official capacity as a commissioned peace officer, and where done in accordance with the law of the state of Texas, as well as the laws of the United States, and the Texas and United States Constitution.

3. I never engaged in any conspiracy against either Mark Rasmusson, Deborah Rasmusson or Rasmark Jet Charter as alleged in paragraph 36 and in other locations in Plaintiffs' Second Amended Petition.

4. I never agreed with anyone to engage in any illegal act, and never joined any conspiracy with any other individuals as alleged in paragraph 88 and else where in Plaintiffs' Second Amended Petition.

5. I was involved with the search of the Rasmark offices at 6805 Boeing El Paso, Texas, on November 22, 1993. The search conducted at that location was done pursuant to a -validly issued search warrant.

6. I picked up the residential trash at 11157 Leo Coll ins, El Paso, Texas on May 13, 1993, June 17, 1993, and on June 28, 1993. I never took any documents or records out of the Rasmusson residence.

7. I did not intimidate nor harass Ms. Deborah Rasmusson at the El Paso Police Department Narcotics Division Headquarters on December 26, 1993, as alleged in paragraph 94 of Plaintiffs Second Amended Petition.

8. I never used any informants that I knew were unreliable, never paid any informants any sums of money for information that I knew was unreliable, never prepared any false reports or affidavit, and never created any reports on investigation using information that I knew to be false of illegal, as alleged in para graph 101 of Plaintiffs Second

Amended Petition.

9. I never engaged in any conspiracy to deprive the Plaintiff of their clearly established constitutional rights or did any of those other allegations made against me as alleged in paragraph 106 of Plaintiffs Second Amended Petition.

10. I never actively participated in any conspiracy against the Plaintiffs, nor took any of the acts alleged, as set out in paragraph 107 of Plaintiffs Second Amended Complaint.

11. At no time did I engage in any conduct that constituted a deprivation of Plaintiffs' constitutionally protected rightsalleged in paragraph 108 of Plaintiffs Second Amended Petition.

12. At no time did I agree with anyone to perform any illegal of unlawful act so as to engage in a conspiracy beginning in 1988 and continuing to the present as alleged in paragraph 109 of Plaintiffs Second Amended Petition.

13. I at no time carried out any searches or seizures without probable cause or with out a warrant as alleged in paragraph 123 of Plaintiffs' Second Amended Petition.

14. I at no time was acting under the direction or control or were in an illegal conspiracy with any of those individuals as alleged in paragraphs 129, 131, and 132 of Plaintiffs' Second Amended Petition.

15. I at no time was acting under the direction or control or were in an illegal conspiracy with any of those individuals as alleged in paragraphs 129, 131, and 132 of Plaintiffs' Second Amended Petition.

16. I at no time carried out searches, seizures, arrests and malicious prosecution of Plaintiffs as alleged in paragraph 132 of Plaintiffs' Second Amended Petition.

17. I never undertook any actions at all willfully, wantonly, maliciously or with reckless disregard as alleged in paragraph 134 of

Plaintiff's Second Amended Petition.

18. I at no time engaged in any activity that could be characterized as a pattern of racketeering activity continuing from 1989 to the present, nor have I obstructed justice nor have I engaged in fraud nor done any of the acts complained of in paragraph 140 of Plaintiffs' Second Amended Petition.

19. I was in no way ever involved in intentionally causing the arrest of Mark B. Rasmusson, in causing an assault upon Deborah Rasmusson, in falsely imprisoning Mark Rasmusson, Deborah Rasmussonor Andrew Gantkessy, never maliciously prosecuted Mark Rasmusson or Deborah Rasmusson, never invaded the privacy nor defamed, slandered nor portrayed in a false light, and I never interfered with Plaintiffs' business contracts, all as alleged in paragraph 150 of Plaintiffs' second Amended Petition.

20. I never was in any way involved in wrongfully carrying out any searches, seizures, arrests, or malicious prosecution of Plaintiffs' as alleged in paragraph 156 of Plaintiffs' Second Amended Petition.

21. All decisions and actions that I took in connection with any investigation of Mark and Deborah Rasmusson and Rasmark Jet Charter, Inc., were, done in accordance with the laws of the State of Texas, the laws of the United States, as well the United States Constitution. I did not attempt to injure or harm any of the named Plaintiffs in this case in any way. I did not violate any clearly established law of which a reasonable law enforcement officer would have known.

22. All actions I took as outlined above in connection with the Rasmussons and Rasmark Jet Charter, Inc., were discretionary functions that a reasonably prudent peace officer would have taken under the same or similar circumstances. A reasonably prudent peace officer would have taken the same actions that I took in connection with the Rasmussons and Rasmark Jet Charter, Inc.

23. I never took any actions concerning the Rasmussons nor

Rasmark Jet Charter with any ill will, bad motive, nor malice in mind. All of my actions taken as set out above were done and taken without. malice, and in the good faith belief that all of my actions were proper and legal and that I did riot violate any clearly established law of the State of Texas or the of the United States, or of the Constitution of the State of Texas or the Constitution of the United States of America.

Signed on this the 8th day of July, 1996.

/s/ James Holland, Affiant

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned authority, on this the 8th day of July, 1996.

/s/ Yvonne Hernandez, Notary
Notary Public In and for
The State of Texas
My commission expires: 07-28-97

[Paragraph numbers added to text]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

MARK B. RASMUSSON RASMARK JET CHARTER, INC., ET AL	§ § §	
PLAINTIFFS,	§	CIVIL ACTION
vs.	§	EP-95-CA-475-F
LAWRENCE E. FROST, ET AL., DEFENDANTS	§ §	

AFFIDAVIT OF JAMES HOLLAND

STATE OF TEXAS §
COUNTY OF EL PASO §

BEFORE ME, the undersigned authority on this day personally appeared JAMES HOLLAND, known to me to be the person whose signature is subscribed below and after being duly sworn did upon oath depose and state the following:

1. My name is JAMES HOLLAND. I am over the age of 18 and am fully competent to make this affidavit. I hereby state that I have personal knowledge of the facts stated herein and that these facts are true and correct.

2. I am employed as a Police Officer by the City of El Paso Police Department. In 1993, 1 was involved in an investigation regarding Plaintiffs Mark Rasmusson and Deborah Rasmusson. In connection with this investigation I interviewed CHRIS HINES once on March 16, 1993, in El Paso, Texas. The contents of the matters

discussed in such interview were reduced to writing by FRED SCHROEDER, U.S. Customs, and have been previously produced to the Plaintiffs in this litigation by the Federal Defendants.

3. After March 16, 1993, I had no further contact with CHRIS HINES. I have reviewed the records maintained by my Department concerning Mark Rasmusson and Deborah Rasmusson and my own recollection and have not located any records which indicate CHRIS HINES made any statements, or supplied any information to the El Paso Police Department regarding Mark Rasmusson or Deborah Rasmusson, or the matters alleged by such Plaintiffs in this litigation, after March 16, 1993.

Further, Affiant sayeth naught."

/s/ James Holland

SWORN AND SUBSCRIBED TO BEFORE ME the undersigned authority on this 31 day of March, 1997.

/s/ Evangelina E. Soto
Notary Public in and for
State of Texas
My Commission Expires 10-02-00

[Paragraph numbers added to text]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

MARK B. RASMUSSON, et.al.,	}	
	}	
Plaintiffs,	}	
	}	
vs.	}	Cause No.: EP-95-CA-475-F
	}	
LAWRENCE E. FROST, et.al.,	}	
	}	
Defendants.	}	

AFFIDAVIT

STATE OF TEXAS }
COUNTY OF EL PASO }

On this day personally appeared the person known to me to be JAMES HOLLAND, who after been duly sworn stated upon his oath as follows:

1. "My name is JAMES HOLLAND, and I am over the age of 21 years, and am competent to make an oath. I have personal, first hand knowledge of all facts and matters set out in this affidavit. I have been employed by the City of El Paso as a commissioned peace officer for the El Paso Police Department since January 6, 1972.

2. From January, 1993, until April, 1995, 1 was assigned to the United States Customs Service Financial Task Force. As part of my duties with the United States Customs Financial Task Force, I assisted in the investigation of Mark B. Rasmusson, Debra Rasmusson and Rasmark Jet Charter, Inc. Attached to Plaintiffs' Second Amended Original Petition as Exhibit "5" is a copy of a twenty six page sworn

[sic] affidavit of Lawrence E. Frost, dated November 19, 1993. All actions and decisions I took in connection with the activities attributed to me that occurred on February 12, 1993, March 1, 1993, March 16, 1993, April 20, 1993, May 13, 1993, June 2, 1993, June 17, 1993, June 28, 1993, November 4,, 1993, November 10, 1993, as well as the execution of the search warrant at the offices of Rasmark on November 22, 1993, were all decisions and actions that I took in my official capacity as a commissioned peace officer, and where done in accordance with the law of the state of Texas, as well as the laws of the United States, and the Texas and United States Constitution.

3. I never engaged in any conspiracy against either Mark Rasmusson, Debra Rasmusson or Rasmark Jet Charter as alleged in Plaintiffs' Third Amended Original Petition.

4. I never agreed with anyone to engage in any illegal act, and never joined any conspiracy with any other individuals as alleged in Plaintiffs' Third Amended Original Petition.

5. I was involved with the search of the Rasmark offices at 6805 Boeing El Paso, Texas, on November 22, 1993. The search conducted at that location was done pursuant to a validly issued search warrant ordering the search signed by a U.S. Magistrate.

6. I picked up the residential trash at 11157 Leo Collins, El Paso, Texas on May 13, 1993, June 17, 1993, and on June 28, 1993. The way I obtained the trash was to wait around the corner from the Rasmusson residence and obtain the segregated bag from an employee of the City of El Paso Sanitation Department. I never took any documents or records out of the Rasmusson residence. I never went on to their property including never going in or onto their trash cabana, at all for any purpose.

7. I did not harass intimidate nor retaliate against Mark B. Rasmusson, Ms. Debra Rasmusson, Rasmark Jet Charter or Andrew Ganthessy as alleged in Plaintiffs Third Amended Original Petition.

8. I never engaged in any conspiracy to deprive any Plaintiff

of their clearly established constitutional rights or did any of those other improper allegations made against me as alleged in Plaintiffs Third Amended Original Petition.

9. I never actively participated in any conspiracy against the Plaintiffs, nor took any of the improper actions alleged, in Plaintiffs Third Amended Original Petition.

10. At no time did I engage in any conduct that constituted a deprivation of Plaintiffs' constitutionally protected rights alleged in Plaintiffs Third Amended original Petition.

11. At no time did I agree with anyone to perform any illegal of [sic] unlawful act so as to engage in a conspiracy beginning in 1987 and continuing to the present as alleged in Plaintiffs Third Amended Original Petition.

12. I at no time carried out any searches or seizures or arrests without probable cause or with out [sic] a warrant as alleged in Plaintiffs' Third Amended Original Petition.

13. I at no time carried out any illegal searches, seizures, nor arrests of Plaintiffs as alleged in Plaintiffs' Third Amended Petition.I never undertook any actions at all willfully, wantonly, maliciously or with reckless disregard as alleged in Plaintiff's Third Amended Original Petition.

14. I never was in any way involved in wrongfully carrying out any harassment, intimidation, retaliation, searches, seizures, or arrests, of Plaintiffs' as alleged in Plaintiffs' Third Amended Petition.

15. All decisions and actions that I took in connection with any investigation of Mark Rasmusson and Debra Rasmusson, Rasmark Jet Charter Inc., and Andrew Ganthessy, were, done in accordance with the laws of the State of Texas, the laws of the United States, as well the United States Constitution. I did not attempt to injure or harm any of the named Plaintiffs in this case in any way. I did not violate any clearly established law of which a reasonable law enforcement officer would

have known.

16. All actions I took as outlined above in connection with Mark Rasmusson, Debra Rasmusson, Rasmark Jet Charter, Inc., and Andrew Ganthessy were discretionary functions that a reasonably prudent peace officer would have taken under the same or similar circumstances. A reasonably prudent peace officer would have taken the same actions that I took in connection with the Plaintiffs.

17. I never took any actions concerning the Mark Rasmusson, Debra Rasmusson, Rasmark Jet Charter, Inc., or Andrew Ganthessy with any ill will, bad motive, nor malice in mind. All of my actions taken as set out above were done and taken without malice, and in the good faith belief that all of my actions were proper and legal and that I did not violate any clearly established law of the State of Texas or the of the United States, or of the Constitution of the State of Texas or the Constitution of the United States of America.

Signed on this the 31st day of March, 1997.

/s/ James Holland, Affiant

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned authority,
on this the 31 day of March, 1997.

/s/ Evangelina E. Soto
NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

My commission expires: 10-02-00

JAMES HOLLAND RESPONSE TO REQUEST FOR ADMISSION

1. Admit that on February 12, 1993 Senior Special Agent Fred Schroeder, Customs Auditor Hector Barrera and you interviewed Arturo Vargas at the U.S. Customs Office of Enforcement, El Paso, Texas pertaining to either Deborah Rasmusson, Mark Rasmusson or Rasmark Jet Charter.

RESPONSE: Admit.

2. Admit that on March 16, 1993 Senior Special Agent Fred Schroeder and you interviewed Christopher Hines pertaining to either Deborah Rasmusson, Mark Rasmusson or Rasmark Jet Charter.

RESPONSE: Admit.

3. Admit that on April 20, 1993 you reported to Special Agent Lawrence E. Frost that a Confidential Source reported that Mark Rasmusson had been arrested in the Cayman Islands.

RESPONSE: Admit.

4. Admit that on May 13, 1993 U.S. Senior Special Agent Fred Schroeder and you obtained the residential trash from 11157 Leo Collins, El Paso, Texas.

RESPONSE: Admit.

5. Admit that on May 13, 1993 U.S. Senior Special Agent Fred Schroeder and you allegedly retrieved a folded up advisement form from the Internal Revenue Service giving the requirements for reporting cash purchases over $10,000.00 from the residential trash at 11157 Leo Collins, El Paso, Texas.

RESPONSE: Defendant can neither admit nor deny this request for admission as written. Defendant does not

know what Plaintiffs mean when they insert the word "Allegedly" into this request. Defendant admits that he and senior special agent Fred Schroeder retrieved the residential trash from 11157 Leo Collins, El Paso, Texas, on May 13, 1993.

6. Admit that on June 2, 1993 U.S. Customs Special Agents Fred Schroeder, Larry Brown, Federal Bureau of Investigation Special Agent Joe Acosta and you contacted Andrew Gantkessy at 15 Leigh Fisher Drive, El Paso, Texas pertaining to either Deborah Rasmusson, Mark Rasmusson or. Rasmark Jet Charter and to himself.

RESPONSE: Admit.

7. Admit that on June 17, 1993 you obtained the residential trash from the Rasmusson residence at 11157 Leo Collins, El Paso, Texas.

RESPONSE: Admit.

8. Admit that on June 28, 1993 U.S. Customs Agents Larry Brown, Fred Schroeder and you obtained the residential trash from 11157 Leo Collins, El Paso, Texas.

RESPONSE: Admit.

9. Admit that on June 28, 1993 U.S. Customs Agents Larry Brown, Fred Schroeder and you allegedly retrieved an envelope with the name Bill Jilles and telephone number (214) 964-1641 hand written on the back.

RESPONSE: Defendant can neither admit nor deny this request for admission as written. Defendant does not know what Plaintiffs mean when they insert the word "Allegedly" into this request for admission. Defendant admits that he and U.S. Customs agents Larry Brown and Fred Schroeder obtained the residential trash from 11157 Leo Collins on June 28, 1993.

10. Admit that on November 4, 1993 that you contacted Ms. Sanchez regarding an alleged assault filed against Deborah Rasmusson.

RESPONSE: Admit.

11. Admit that on March 1, 1993 Officer Andrew DeAngelo provided a statement to you allegedly pertaining to his observations of Rasmark Jet Charter.

RESPONSE: Defendant can neither admit nor deny this request for admission as written. Defendant does not know what Plaintiffs mean when -they insert the word "Allegedly: into this request for admission. Defendant admits he obtained a statement from officer Andrew DeAngelo on March 1, 1993.

12. Admit that on November 10, 1993 Defendant Salas of the El Paso Police Department told you that the box of records which were seized from Deborah Rasmusson, on or about May 23, 1992, had been with Deborah Rasmusson at the office of Rasmark Jet Charter, 6805 Boeing Drive, El Paso, Texas when he [officer Salas] picked her up.

RESPONSE: Admit.

[End of document]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

MARK B. RASMUSSON,, ET AL.,	)	
	)	
Plaintiffs,	)	
v.	)	NO. EP-95-CA-475-F
	)	
LAWRENCE E. FROST, ET AL.,	)	
	)	
Defendants.	)	

DECLARATION OF ERIC E. MILLS

1. I, Eric E. Mills, am a senior special Agent, Office of Investigations, U.S. Customs Service, El Paso, Texas where I have been stationed since November, 1991.

2. I had no involvement in any law enforcement activities concerning one or more of the Plaintiffs until approximately September of 1992. During September of 1992 I was assigned to coordinate and oversee a group of Special Agents assigned to surveillance of RASMARK JET CHARTER.

3. I was present at the U.S. Customs Service,, Office of Investigations on May 23, 1992, when Deborah RASMUSSON was interviewed.

4. I was at the Circle K store located at Montana and Hawkins Street when Senior Special Agent Frost met George Salas. I then followed Salas' vehicle to the Customs Office. There were not 15 to 20 Special Agents present and no Special Agent displayed their f irearms. In fact, the only weapon displayed was a .38 calibre revolver which Agent Frost took from Deborah RASMUSSON.

5. I sat with Deborah RASMUSSON's son, Ian MAYE,

during the course of the interview of his mother. I did not question Ian MAYE nor did I suggest that Mark RASMUSSON was planning to physically harm Deborah RASMUSSON. Ian MAYE made an unsolicited statement, "I have been telling my mother to get away from Mark because he is a crook". Ian MAYE stated that he was very afraid for his mother as he felt that Mark was trying to kill her.

6. Ian MAYE and Deborah RASMUSSON were not at any time in custody and were free to go at any time they wished. When Deborah RASMUSSON pulled the fire alarm, she was not detained, she immediately left the building.

7. As Ian MAYE left the Customs Office he stated that everything needed to send Mark RASMUSSON to prison was in the box carried by his mother. I reported this information to Agent Frost.

8. I accompanied Agent Frost to the Diamond Shamrock Station on the corner of Viscount and Acer, El Paso, Texas. Upon our arrival the door to the store was not locked.

9. Ian MAYE ran from the store and returned with the subject box. Apparently, he or his mother had hidden the box behind a nearby rock wall.

10. When Agent Frost advised KAYE and RASMUSSON that the box was to be seized, Ian MAYE became assaultive, attempting to strike Agent Frost. I restrained MAYE, even though he was restrained, MAYE continued to attempt to assault Agents. Eventually, Agent Frost placed handcuffs on MAYE for his own safety. Ian MAYE was never "grabbed by the neck and thrown to the ground".

11. The box was taken into custody and kept secure until a search warrant was obtained.

12. I never heard anyone present on the night of this incident state, "this never happened".

13. I was present at the Ysleta Port of Entry, El Paso, Texas on

November 10, 1992, on the occasion when Customs Inspectors seized Deborah RASMUSSONs vehicle.

14. The vehicle was seized by Customs Inspectors due to the fact that when RASMUSSON entered the United States the vehicle contained a switch blade knife and a small amount of marijuana.

15. I was present when Agent Frost conducted a Border Search of the vehicle. During this incident I did not search Deborah RASMUSSON, nor did I see anyone else search Deborah RASMUSSON. I did not, nor did I see anyone else, attempt to get Deborah RASMUSSON to sign any documents which ceded ownership of her vehicle to the U.S. Government.

16. I did not "fabricate" the finding of .1 gram of marijuana in the RASMUSSON vehicle. Senior Special Agent Schroeder was not present at the time of this incident.

17. I was never a case agent in any matter involving the Plaintiffs nor was I ever officially assigned to the Financial Task Force. I was not a member of, nor am I aware of, any conspiracy against the Plaintiffs in this case.

18. I did not do any "background checks" on the Plaintiffs while I was assigned to the mentioned surveillance detail. Investigation of past conduct of persons who are under investigation is generally conducted by the case agent, in my experience.

19. During my short involvement in this case, I never requested any "document analysis" of any kind, due to the fact that I never seized any documentary evidence. Additionally, these types of decisions and requests would be the responsibility of the case agent.

20. During the surveillance operation for which I was the coordinator I never, nor did I ever direct anyone else to stop nor search any vehicle, aircraft nor person. I did not at any time enter the premises of RASMARK JET CHARTER other than under authority of a lawfully issued search warrant.

21. I have never entered the RASMUSSON residence nor the curtilage of the RASMUSSON residence.

22. In their complaint the Plaintiffs have stated that there were times that no activities were observed by myself nor other members of the surveillance team. In my experience this is true of all surveillances, it is not uncommon to observe for long periods of time without seeing anything unusual.

23. In their complaint the Plaintiffs state that no evidence of criminal activity was developed during surveillance. In my experience, it would be very unusual to be maintaining surveillance for intelligence purposes and just happen to see the subject of the surveillance openly commit a felony. In the type of surveillance conducted in this investigation, intelligence as to the habits of the subjects and their associates is a part of a much larger investigation.

24. I was present as a witness when Agent Frost interviewed Gail BEACH. In his Report of Investigation detailing what BEACH said, Agent Frost reported the interview accurately.

25. I took no steps to verify what BEACH said as I was not assigned to this task.

26. I have no information regarding the search of a RASMARK aircraft at Love Field in Dallas, Texas.

27. I have never had any contact with any bank officers nor employees regarding the Plaintiffs.

28. I have never been a part of, nor am I aware, of any "bogus" or "sham" investigation.

29. I have never been a part of any conspiracy against anyone, specifically including the Plaintiffs.

30. I have never been a part of nor have I ever been aware of any cover-up.

31. All of my actions during the investigation of the Plaintiffs were done in good faith and within the scope of my federal employment.

32. I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge of April, 1997.

April 2, 1997
Date

/s/ Eric E. Mills
Senior special Agent
Office of Investigations
U.S. Custom Service

DECLARATION OF JOE L. ACOSTA

"I, Joe L. Acosta do hereby declare and states as follows:

1. I am a Special Agent of the Federal Bureau of Investigation (FBI), and have been so employed since September 23, 1990. From January of 1992, I have been assigned to the El Paso Division of the FBI.

2. I am aware that Plaintiff Mark Rasmusson was a subject of a criminal investigation by a Task Force of Federal and State law enforcement Agents, including the FBI, the U.S. Customs Service (USCS), the El Paso Police Department (EPPD), and the El Paso County Sheriff's Department. The investigation was certified as an Organized Crime/Drug Enforcement Task Force case on July 24, 1992 with USCS as the lead agency.

3. In March of 1992, I was assigned by my squad supervisor to serve as the sole FBI representative to the Task Force. The FBI was to coordinate and organize the financial information, relating to possible bank fraud violations, into a prosecutive package. Also, the FBI was to provide technical assistance. During the course of the investigation, I had only minimal involvement in the case.

4. I have read the Plaintiffs' Original Petition, First Amended Original Petition, and Second Amended Original Petition, and the allegations contained therein. I was able to determine that only four of the allegations in the Petitions concern investigative activities in which I participated.

5. The first allegation is found in the Plaintiffs' Original Petition (p. 32, para.104). The Plaintiffs state that on or about November 22, 1993, a search was conducted of the Rasmusson's residence located at 11157 Leo Collins, El Paso, Texas. The Plaintiffs allege that the affidavit drafted by USCS Agent Lawrence Frost for the search warrant for the Rasmusson residence, contained information provided by an FBI source (FBI-1) that was unreliable (P.40, para. (90)

(b) - Second Amended Original Amended Petition).

6. This allegation concerning the unreliability of the source is false. The source furnishing information to me had been an FBI source for over a year, and during that time provided information concerning the Rasmussons which was corroborated. The source was in a unique position to possess specific information concerning the Rasmussons and their residence. The source furnished the information as a civic responsibility and never received any payment. The search of the Rasmusson's residence located evidence which the source had indicated would be present.

7. I did not assist USCS Agent Frost in the preparation of the search warrant affidavit for the Rasmusson residence. I merely provided information contemporaneously furnished by the source which contributed to the totality of the facts establishing probable cause. During the execution of the warrant, my assignment was to videotape the search location before and after the search. I did not seize any evidence.

8. The second allegation which concerns my involvement is discussed on p.27, para.81 of the Plaintiffs' Original Petition. The Plaintiffs state that a Rasmark aircraft was being returned to its hangar at the El Paso International Airport on June 1, 1993, when two cars of FBI Agents followed the plane. When the plane stopped, the Agents attempted to question a Rasmark employee and he refused to talk. The Agents then interviewed the pilot. The Plaintiffs intimated that the stop and questioning of the Rasmark employees was indicative of the harassment of the Rasmussons by the Defendants.

9. The facts are that on June 1, 1993, USCS Agent Frost, one other USCS Agent Fred Schroeder, EPPD James Holland, and I drove to the Rasmark hangar. As a Rasmark plane was being taxied to a stop, Agent Frost approached the aircraft's pilot and asked if he would consent to an interview. Agent Frost wanted to interview the pilot to determine his knowledge of the activities of the Rasmark operation. I did not participate in the interview.

10. The third allegation which concerns my involvement in the Task Force investigation of the Rasmussons, is found at pages 35 & 36, paragraphs 79 & 80 of the Plaintiffs' Second Amended Original Petition. The Plaintiffs state therein that USCS Agents made arrangements, on or about June 2, 1993, to interview Plaintiff Andrew A. Gantkessy, a traffic manager for the Ford Motor Company. It is alleged by the Plaintiffs that 5 to 15 Agents subsequently confronted Gantkessy, did not read him his Miranda rights, interrogated him, refused to allow him to call his attorney, and kept him from leaving the conference room. This interrogation supposedly caused him to become so ill that he was forced to see his doctor for treatment.

11. The facts are that on June 22, 1993, Task Force Agents interviewed Gantkessy in his own office. The Agents had previously made an appointment with him to conduct the interview, in order to determine his involvement with Plaintiff Deborah L. Rasmusson. The interview was conducted by approximately 6 to 7 members of the Task Force. There were more officers present than would usually be necessary to conduct an interview because the members represented various agencies with different, individual interests in potential money laundering violations. Gantkessy was not read or advised of his constitutional rights at the start of the interview because he was not in custody at the time of the interview, and there were never any plans to arrest Gantkessy. I was present during the interview, however, I do not recall asking any questions of Gantkessy. I never heard Gantkessy ask for an attorney, nor do I recall that her ever asked to leave his office.

12. A day or two after the June 22nd interview, Gantkessy was asked to appear at the USCS Office to clarify some points from his previous interview. At that time USCS Agent Fred J. Schroeder and I spoke with Gantkessy, and he furnished us with a short statement in which he also agreed to co-operate with the Task Force and furnish information about the Rasmusson's operations. At no time during the interview did Gantkessy give any indications that he was suffering any ill effects from the June 22nd interview, nor did he look sick.

13. The final allegation which might imply FBI involvement, concerns a statement by the Plaintiffs about a "raid" by Agents on the

Ford Motor Company world headquarters in Dearborn, Michigan, on or around November 1, 1993. The Plaintiffs state that the Agents (agency unspecified) seized all records pertaining to Ford's business relating with Rasmark, and that the raid was made without probable cause.

14. I am not aware of any such raid or seizure. I am not aware that any such event occurred under FBI direction. It is also unlikely that another agency would have conducted such activity in this investigation without my having been made aware. However, at the end of October, 1992, I did contact the Detroit FBI Office and request that an administrative subpoena be issued at the Ford Headquarters for Rasmark business documents. The Detroit Office did in fact obtain an administrative subpoena, which was served upon the appropriate Ford Custodian of Records, who subsequently compiled the records and furnished them to the FBI. I was not present when the administrative subpoena was either mailed to, or served upon, the Ford Headquarters by Detroit FBI Agent(s).

15. I believe that the above allegations are the only ones which mention or concern myself and/or the FBI. As I have indicated, the allegations are not true.

16. I hereby state that all of the investigative functions performed by me in the Rasmusson Task Force case, functions of my official duty and were performed in the scope of my employment as an FBI Agent.

17. I was not a participant in any investigative activity during the Rasmusson investigation which was improper or inappropriate. I am also not aware of any action taken by any other law enforcement agency or officer during the Rasmusson investigation, which was either improper or inappropriate.

I swear under penalty of perjury that the foregoing Declaration is true and correct to the best of my knowledge and belief."
SIGNED this the 31st day of July, 1996.

/s/ Joe L. Acosta
Special Agent, El Paso FBI

DECLARATION OF JOE L. ACOSTA

"I, Joe L. Acosta do hereby declare and states as follows:

1. I am a Special Agent of the Federal Bureau of Investigation (FBI), and have been so employed since September 23, 1990. From January of 1992, I have been assigned to the El Paso Division of the FBI.

2. I am aware that Plaintiff Mark Rasmusson was a subject of a criminal investigation by a Task Force of Federal and State law enforcement Agents, including the FBI, the U.S. Customs Service (USCS), the El Paso Police Department (EPPD), and the El Paso County Sheriff's Department. The investigation was certified as an Organized Crime/Drug Enforcement Task Force case on July 24, 1992 with USCS as the lead agency.

3. In March of 1992, I was assigned by my squad supervisor to serve as the sole FBI representative to the Task Force. The FBI was to coordinate and organize the financial information, relating to possible bank fraud violations, into a prosecutive package. Also, the FBI was to provide technical assistance. During the course of the investigation, I had only minimal involvement in the case.

4. I have read the Plaintiffs' Third Amended Petition, and the allegations contained therein.

5. The Plaintiffs' state that on or about November 22, 1993, a search was conducted of the Rasmusson's residence located at 11157 Leo Collins, El Paso, Texas. The Plaintiffs allege that the affidavit drafted by USCS Agent Lawrence Frost for the search warrant for the Rasmusson residence, contained information provided by two FBI sources that was unreliable.

6. This allegation concerning the unreliability of the sources are false. The source that furnished information to me had been an FBI source for over a year, and during that time provided information

concerning the Rasmussons which was corroborated. The source was in a unique position to possess specific information concerning the Rasmussons and their residence. The source furnished the information as a civic responsibility and never received any payment. The search of the Rasmusson's residence located evidence which the source had indicated would be present. The second source provided information to SA William J. May who provided it to me. SA May indicated to me that his source was very reliable.

7. I did not assist USCS Agent Frost in the preparation of the search warrant affidavit for the Rasmusson residence. I merely provided information contemporaneously furnished by the source which contributed to the totality of the facts establishing probable cause. During the execution of the warrant, my assignment was to videotape the search location before and after the search. I did not seize any evidence.

8. The Plaintiffs state that a Rasmark aircraft was being returned to its hangar at the El Paso International Airport on June 1, 1993, when two cars of FBI Agents followed the plane. When the plane stopped, the Agents attempted to question a Rasmark employee and he refused to talk. The Agents then interviewed the pilot. The Plaintiffs intimated that the stop and questioning of the Rasmark employees was indicative of the harassment of the Rasmussons by the Defendants.

9. The facts are that on June 1, 1993, USCS Agent Frost, one other USCS Agent Fred Schroeder, EPPD James Holland, and I drove to the Rasmark hangar. As a Rasmark plane was being taxied to a stop, Agent Frost approached the aircraft's pilot and asked if he would consent to an interview. Agent Frost wanted to interview the pilot to determine his knowledge of the activities of the Rasmark operation. I did not participate in the interview.

10. The Plaintiff's state USCS Agents made arrangements, on or about June 2, 1993, to interview Plaintiff Andrew A. Gantkessy, a traffic manager for the Ford Motor Company. It is alleged by the Plaintiffs that 5 to 15 Agents subsequently confronted Gantkessy, did not read him his Miranda rights, interrogated him, refused to allow him

to call his attorney, and kept him from leaving the conference room. This interrogation supposedly caused him to become so ill that he was forced to see his doctor for treatment.

11. The facts are that on June 22, 1993, Task Force Agents interviewed Gantkessy in his own office. The Agents had previously made an appointment with him to conduct the interview, in order to determine his involvement with Plaintiff Deborah L. Rasmusson. The interview was conducted by approximately 6 to 7 members of the Task Force. There were more officers present than would usually be necessary to conduct an interview because the members represented various agencies with different, individual interests in potential money laundering violations. Gantkessy was not read or advised of his constitutional rights at the start of the interview because he was not in custody at the time of the interview, and there were never any plans to arrest Gantkessy. I was present during the interview, however, I do not recall asking any questions of Gantkessy. I never heard Gantkessy ask for an attorney, nor do I recall that her ever asked to leave his office.

12. A day or two after the June 22nd interview, Gantkessy was asked to appear at the USCS Office to clarify some points from his previous interview. At that time USCS Agent Fred J. Schroeder and I spoke with Gantkessy, and he furnished us with a short statement in which he also agreed to co-operate with the Task Force and furnish information about the Rasmusson's operations. At no time during the interview did Gantkessy give any indications that he was suffering any ill effects from the June 22nd interview, nor did he look sick.

13. Plaintiffs' final allegation which might imply FBI involvement, concerns a statement by the Plaintiffs about a "raid" by Agents on the Ford Motor Company world headquarters in Dearborn, Michigan, on or around November 1, 1993. The Plaintiffs state that the Agents (agency unspecified) seized all records pertaining to Ford's business relating with Rasmark, and that the raid was made without probable cause.

14. I am not aware of any such raid or seizure. I am not aware that any such event occurred under FBI direction. It is also unlikely that

another agency would have conducted such activity in this investigation without my having been made aware. However, at the end of October, 1992, I did contact the Detroit FBI Office and request that an administrative subpoena be issued at the Ford Headquarters for Rasmark business documents. The Detroit Office did in fact obtain an administrative subpoena, which was served upon the appropriate Ford Custodian of Records, who subsequently compiled the records and furnished them to the FBI. I was not present when the administrative subpoena was either mailed to, or served upon, the Ford Headquarters by Detroit FBI Agents.

15. I believe that the above allegations are the only ones which mention or concern myself and/or the FBI. As I have indicated, the allegations are not true.

16. I hereby state that all of the investigative functions performed by me in the Rasmusson Task Force case, including the actions complained of by the Plaintiffs, were functions of my official duty and were performed in the scope of my employment as an FBI Agent.

17. I was not a participant in any investigative activity during the Rasmusson investigation which was improper or inappropriate. I am also not aware of any action taken by any other law enforcement agency or officer during the Rasmusson investigation, which was either improper or inappropriate.

I swear under penalty of perjury that the foregoing Declaration is true and correct to the best of my knowledge and belief."

SIGNED this the 2nd day of April, 1997.

/s/ Joe L. Acosta
Special Agent, El Paso FBI

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

MARK B. RASMUSSON, ET AL.,	)	
	)	
Plaintiffs,	)	
v.	)	CIVIL ACTION
	)	NO. EP-95-CA-475-F
LAWRENCE E. FROST, ET AL.,	)	
	)	
Defendants.	)	

DECLARATION OF DONALD L. REAY

1. I, Donald L. Reay, was an Assistant Special Agent in Charge with the United States Customs Service, El Paso, Texas, before I retired in June 1996. I have been a Federal employee for over 25 years, having served in the Border Patrol, Drug Enforcement Administration, and United States Customs. I was an Assistant Special Agent in Charge (ASAC) in El Paso for approximately six years. From July 1990 to July 1992, I served as the ASAC for El Paso Operations. From approximately July 1992 until June 1993, I served as the ASAC for Field Operations. From Approximately June 1993 until January 1994, I served as the ASAC for El Paso operations and from January 1994 to my retirement in June 1996, I served as the ASAC for Field Operations.

2. Plaintiffs' allegations that Special Agent Michael Lappe and I illegally moved funds from certain undercover operations to fund the Rasmark investigation is false. It is not true that funds cannot be taken from one operation to support another. Funds can be used from one operation to support another if the operations are similar in scope. In fact, the Rasmark case was adopted under Ops Transwestern because it was an "air transport" initiative and Rasmark is an air transport company. The assumption of EP02CROEP013 is reported in ORs Transwestern monthly reports. It is also noted the Ops Transwestern is now closed and has undergone a Management Inspection Division audit,

as well as internal audits as required. No wrongdoing was found.

3. Plaintiffs allege that sometime in August 1992, Special Agents Lappe and Reay stole funds from certified undercover operation(s) known as Red Chile, and/or Ops Transwest2rn, and/or Cavern, and/or Aruba respectively and used the stolen funds to frame a covert operation against the Plaintiffs. I have reviewed the records of Red Chile, which is also closed and the records have been audited by the Management Inspection Division, as well as internal audits as required, and the audits revealed no wrongdoing. No Red Chile money was used in the support of the Rasmark investigation. I requested a review to be done of the Ops Transwestern books and have found that less than $2000.00 of 0ps Transwestgrn money was used in per diem expenses and was reported in the books that have since been audited. The monthly report for September 1992 denotes the adoption of case EP02CROEP013 into Ops Transwestern and the payment of surveillance expenses, (per diem included). This was a proper expenditure of funds. As to Cavern and Aruba, I have no knowledge of any monies being spent in the investigation of Rasmark, as those operations are not under the control of the Special Agent in Charge, El Paso. I did not make the decision to use Ops Transwestern money for part of the surveillance, however, in review, I believe the action to be proper and consistent with United States Customs Service policy.

4. On or about May 23, 1992, I was present at the Customs Service office at 9400 Viscount Blvd., El Paso, Texas, when Deborah Rasmusson was being interviewed, but I did not sit in on the interview. I was working in another office within the building. However, during the course of the interview, I heard Deborah Rasmusson became belligerent and abusive. On the way out, she set off the building's fire alarm.

5. To the best of my knowledge, I have never been investigated by the Office of Inspector General (OIG). I know Mr. Lappe was investigated, and he received a clearance letter exonerating him of all the allegations of wrongdoing.

6. I was neither involved in nor do I have any personal

knowledge of the remaining allegations contained in the Plaintiffs' Second Amended Petition.

7. I declare under penalty of perjury that the foregoing statements are true and correct. Executed on this 30th day of July 1996.

/s/ Donald L. Reay
Assistant Special Agent
in Charge (Retired)
U.S. Customs Service

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

MARK B. RASMUSSON, ET AL.,	)	
	)	
Plaintiffs,	)	
v.	)	CIVIL ACTION
	)	NO. EP-95-CA-475-F
LAWRENCE E. FROST, ET AL.,	)	
	)	
Defendants.	)	

DECLARATION OF' DONALD L. REAY

1. I, Donald L. Reay, was an Assistant Special Agent in charge with the United States Customs Service, El Paso, Texas, before I retired in June 1996. 1 had been a Federal employee for over 25 years, having served in the Border Patrol, Drug Enforcement Administration, and United States Customs. I was an Assistant Special Agent in Charge (ASAC) in El Paso for approximately six years. From July 1990 to July 1992, 1 served as the ASAC for El Paso Operations. From approximately July 1992 until June 1993, I served as the ASAC for Field Operations. From Approximately June 1993 until January 1994, I served as the ASAC for El Paso Operations and from January 1994 to my retirement in June 1996, I served as the ASAC for Field Operations.

2. The function o f the Financial Task Force was the investigation of suspected money laundering operations that had a nexus with the El Paso, Texas area, and was composed of members of participating local, state, and federal law enforcement entities. The creation of the Task Force had absolutely nothing to do with continuing any investigation of the Plaintiffs.

3. I have no knowledge that any false complaints were made to the FAA, Ford Motor Company, by Senior Special Agent Frost to be incorporated in his affidavits in support of search warrants filed on or

about November 19, 1993, or the Chrysler Corporation and Ford Motor Company employees, and Rasmark's prospective customers.

4. I have no knowledge of any false information given to anyone by any of the agents who participated in the Financial Task Force investigations.

5. I have no direct knowledge of the allegations concerning El Paso Police Officer George L. Salas, other than that he was present on the night of the interview of Mrs. Rasmusson at the Customs Service Office at 9400 Viscount Blvd., El Paso, Texas on may 23, 1992.. Mr. Salas was absolutely not a participant in the Financial Task Force.

6. On or about May 23, 1992, I was present at the Customs Service office at 9400 Viscount Blvd., El Paso, Texas, when Deborah Rasmusson was being interviewed, but I did not sit in on the interview. I was working in another office within the building. However, during the course of the interview, I heard Deborah Rasmusson became belligerent and abusive. On the way out, she set off the building's fire alarm.

7. I did not accompany Deborah Rasmusson or Ian Maye into the Customs Service office building and have no personal knowledge of the events that occurred at that time.

8. I remained in the office building to try to deactivate the fire alarm, as an emergency response to the false alarm would place the Firemen and the citizens of El Paso at risk needlessly. I have no personal knowledge of what transpired after Deborah Rasmusson and her son left the building and then proceeded to the nearby Diamond-Shamrock convenience store. I subsequently accompanied Group Supervisor Michael Wilczewski to the Diamond Shamrock store where Deborah Rasmusson and her son were awaiting their ride and the Special Agents present were directed to return to the office.

9. I have no knowledge that state National Bank officers were informed that Rasmark was a mere front corporation for money laundering and that Mark Rasmusson was a known major cocaine

dealer.

10. To the best of my knowledge, I have never been investigated by the Office of Inspector General (OIG). I know Mr. Lappe was investigated, and he received a clearance letter exonerating him of all the allegations of wrongdoing.

11. I have no personal knowledge of any discussions between Andrew Gantkessy and Ford Motor Company officials.

12. I had no personal involvement in the execution of the search warrants on November 22, 1993.

13. To my knowledge, the affidavits supporting the applications for the search warrants on the Rasmusson residence and the business of Rasmark were prepared accurately and truthfully. I have no reason to believe that the information provided by informants was not reliable or accurate, or that documents specified in the affidavit concerning the residence were obtained by covert entry into the residence and not from the trash. I have absolutely no knowledge of any bogus or sham investigations of any of the Plaintiffs.

14. I have no personal knowledge of any Financial Task Force agent interfering with negotiations between Rasmark and Ford motor Company or interfering in any other business relationships between Rasmark and Ford Motor Company.

15. I never received any complaints regarding any refusal to return Rasmark essential records, and I know that every effort was made to cause minimal disruption to the Rasmark business.

16. I have no personal knowledge of any allegations relating to an incident involving Mrs. Rasmusson at the El Paso Police Department Narcotics Division Headquarters on or about December 26, 1993, or an attack upon Mrs. Rasmusson and her son at a stoplight on or about January 1994, or a meeting by El Paso Police Department Detectives with school officials on or about March 1994, or an altercation involving El Paso Police Department Officers at Mrs.

Rasmusson's residence during a birthday party for her son on or about December 12, 1994.

17. I have no knowledge of any conspiracy in persuading Texas Commerce Bank to refuse to open an account or loan money to Rasmark based on giving false information to the bank on or about December 7, 1994.

18. I have no direct knowledge of the alleged seizure of Mrs. Rasmusson's car(s) on at least five separate occasions during or about 1995, or the arrests and prosecutions of Mrs. Rasmusson on or about August 8, 1993, December 1993, March 1995, June 1995, and November 1995.

19. Prior to my deposition, I never heard of the complaint letters to the Congressional representatives, Mr. Mack's response to the letters, or,of a group of pilots with complaints.

20. I do not know of any false information that was provided to any OCDETF committee, any company, any individual, or any member of the Judiciary in any matter involved with the investigation of the Plaintiffs. I have never asked nor have I allowed any employee to perjure themselves under any circumstances. I have never heard of anyone making any allegation of corruption that was met with contempt.

21. I was never advised by any agent of any of the agencies participating in the Financial Task Force that there were any problems with the investigation of the Plaintiffs.

22. I have no knowledge of any informant or informant or information regarding the Plaintiffs as being unreliable.

23. I have never participated in or heard of any conspiracy by anyone to violate any constitutional right of any of the Plaintiffs, or anyone else, nor have I ever participated in or heard of any plan to shut down Rasmark. I have no knowledge of any cover up of anything regarding the Plaintiffs.

24. I was not at the Port of Entry on November 10, 1992, when Mrs. Rasmusson and her vehicle were the subjects of a border search.

25. I have never participated in nor have I ever heard of the development of any tactic or strategy as described in the Plaintiff's plan A, plan B, or plan C. The Financial Task Force did not have the drugs or money to furnish anyone, nor was there ever any plan to get any drugs or money to furnish any of the Plaintiffs.

26. All of my actions during the investigation of the Plaintiffs were done in good faith and within the course and scope of my federal employment. I deny that I did anything illegal and further, I have no personal knowledge of anyone else committing any illegal acts during the investigation.

27. I declare under penalty of perjury that the foregoing statements are true and correct. Executed on this 30 day of April 1997.

/s/ Donald L. Reay
Assistant Special Agent
in Charge (Retired)
U.S. Customs Service

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

MARK B. RASMUSSON, ET AL.,	)	
Plaintiffs,	)	
	)	
v.	)	CIVIL ACTION NO.
	)	EP-95-CA-475-F
	)	
LAWRENCE E. FROST, ET AL.,	)	
	)	
Defendants.	)	

DECLARATION OF MICHAEL WILCZEWSKI

1. I, Michael Wilczewski, am currently a Group supervisor, office of Investigations, U.S. Customs Service, and have held this position in El Paso, Texas since 1989.

2. In approximately February 1992, 1 was reassigned from my former position as the Fraud Group Supervisor to that of Currency Group Supervisor, Office of Investigations, El Paso, Texas.

3. In March 1992, a Financial Task Force was established under my supervision as the Currency Group Supervisor, with Senior Special Agent Lawrence E. Frost being assigned an the Lead Agent for the Task Force.

4. The function of the newly created Task Force was the investigation of suspected money laundering operations that had a nexus with the El Paso, Texas area, and was composed of members of participating local, state, and federal law enforcement entities.

5. My supervision of the Financial Task Force, and of Senior Special Agent Frost, consisted of attending regularly scheduled meetings and conferences; routinely reviewing all interim or significant

incident reports; discussing with Senior Special Agent Frost all proposed law enforcement activities, such as the proposed issuance of warrants and the direction of the overall investigations pending in the Task Force Office, and frequently being physically present to observe the activities of law enforcement actions in connection with such investigations.

6. I continued as the Currency Group Supervisor and as the supervisor of Senior Special Agent Frost until April 1994, when I was assigned to develop and implement an Intelligence Unit. I had no responsibilities or duties with the Financial Task Force after that time.

7. I have no knowledge that any false complaints were made to the FAA, Ford Motor Company, by Senior Special Agent Frost to be incorporated in his affidavits in support of search warrants filed on or about November 19, 1993, or the Chrysler Corporation and Ford Motor Company employees, and Rasmark's prospective customers. I personally reviewed the Reports of Investigation associated with the interview of Mr. Hines by Senior Special Agent Schroeder and Detective Holland and found it to be in accordance with policy and procedure.

8. I have no information that Beach, Hines, or Short gave false information to the Ford Motor Company investigators or that Mr. Sudomir gave false information to the Ford Motor Company and Senior Special Agent Frost for use in affidavits supporting the search warrants dated on or about November 19, 1993. My review of the investigative report does not reflect any statement by Mr. Sudomir in support of said warrants.

9. I have no direct knowledge of the allegations concerning El Paso Police Officer George L. Salas, other than that he was present on the night of the interview of Mrs. Rasmusson at the Customs Service Office at 9400 Viscount Blvd., El Paso, Texas.

10. On or about May 24, 1992, I was present at the Customs Service Office at 9400 Viscount Blvd., El Paso, Texas when Deborah Rasmusson and Ian Maye arrived with a box of business records. I do

not recall the exact number of agents who were at the Customs Service Office on that date, but I do not believe there were more than five Special Agents, myself, and Assistant Special Agent in Charge,, Donald Reay. I had to call out two additional Special Agents to observe and report activities at the business premises in case Special Agent Frost obtained a consent to search or possible evidence was going to be removed or destroyed. When it was determined that a Consent to Search was not going to be given, one of the Special Agents was released to go home, and the other, Senior Special Agent Schroeder, was asked to report to the office.

11. I did not accompany Deborah Rasmusson or Ian Maye into the Customs Service office building and have no personal knowledge of the events that occurred at that time. However, I was subsequently present for a short time when Senior Special Agent Frost asked Deborah Rasmusson if she would sign a Consent to Search for her business and residence. She was hesitant about signing the consent form and I asked Senior Special Agent Frost to step into the hall, where I told him that if Deborah Rasmusson no longer wished to cooperate in the investigation, then we should just conclude the interview and that she may later change her mind. I subsequently went back into the interview room and advised Deborah Rasmusson that the interview was over and that she could return if she decided to cooperate. I then instructed Senior Special Agent Frost to escort Deborah Rasmusson and her son, Ian Maye out of the building.

12. I remained in the office building to call the Fire Department concerning the false alarm and have no personal knowledge of what transpired after Deborah Rasmusson and her son left the building and then proceeded to the nearby Diamond Shamrock convenience store. I subsequently accompanied Assistant Special Agent in Charge Donald Reay to the Diamond Shamrock store where Deborah Rasmusson and her son were awaiting their ride and the Special Agents present were directed to return to the office.

13. I have no knowledge that State National Bank officers were informed that Rasmark was a mere front corporation for money laundering and that Mark Rasmusson was a known major cocaine

dealer.

14. I have no direct knowledge of any investigation of Special Agent in Charge Michael Lappe by the office of the Inspector General, Department of the Treasury, or of any false affidavits or perjured testimony by SAC Lappe. I was never interviewed by office of the Inspector General Investigators with respect to any such investigation.

15. I have no personal knowledge of any discussions between Andrew Gantkessy and Ford Motor Company officials.

16. on November 22, 1993, I was present during the execution of a judicially approved search warrant of the residence of Mark and Deborah Rasmusson and then left to go to the business office of Rasmark Jet Charter, Inc., where the judicially approved search had already begun. These were not "raids" or forced entry searches, but were conducted in a professional and business-like manner, in accordance with customs policies and procedures.

17. During the search at the Rasmark business office, I told one of the clerical personnel of Rasmark that she could make copies of important documents while the search was being done, in order to maintain business operations. As the search of the premises was conducted, she made numerous copies of records she deemed necessary toward this end. In addition, I was advised that a copy of their computer system was obtained and the computer system, to my knowledge, was left in its original state and fully operational. I have no knowledge of any law enforcement officers conducting the search losing any of Rasmark's records or of any gun collection being found or removed from either the residence or business office location.

18. To my knowledge, the affidavits supporting the applications for the search warrants on the Rasmusson residence and the business of Rasmark were prepared accurately and truthfully. I have no reason to believe that the information provided by informants was not reliable or accurate, or that documents specified in the affidavit concerning the residence were obtained by covert entry into the

residence and not from the trash.

19. I have no personal knowledge of any Financial Task Force agent interfering with negotiations between Rasmark and Ford Motor Company or interfering in any other business relationships between Rasmark and Ford Motor Company.

20. I never received any complaints regarding any refusal to return Rasmark essential records, and I know that every effort was made to cause minimal disruption to the Rasmark business.

21. I have no personal knowledge of any allegations relating to an incident involving Mrs. Rasmusson at the El Paso Police Department Narcotics Division Headquarters on or about December 26, 1993, or an attack upon Mrs. Rasmusson and her son at a stoplight on or about January 1994, or a meeting by El Paso Police Department Detectives with school officials on or about March 1994, or an altercation involving El Paso Police Department Officers at Mrs. Rasmusson's residence during a birthday party for her son on or about December 12, 1994.

22. I have no knowledge of any conspiracy in persuading Texas Commerce Bank to refuse to open an account or loan money to Rasmark based on giving false information to the bank on or about December 7, 1994. I was no longer the Currency Group Supervisor or the supervisor of Senior Special Agent Frost at that time.

23. I have no direct knowledge of the seizure of Mrs. Rasmusson's car(s) on at least five separate occasions during or about 1995, or the arrests and prosecutions of Mrs. Rasmusson on or about August 8, 1993, December 1993, March 1995, June 1995, and November 1995.

24. I was neither involved in nor do I have any personal knowledge of the remaining allegations contained in the Plaintiffs Second Amended Petition.

25. I declare under penalty of perjury that the foregoing

statements are true and correct to the best of my knowledge.
Executed on the 30th day of July, 1996.

/s/ Michael J. Wilczewski
Office of Investigations
U.S. Customs Service

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

MARK B. RASMUSSON, ET AL.,	)	
	)	
Plaintiffs,	)	
v.	)	CIVIL ACTION NO.
LAWRENCE E. FROST, ET AL.,	)	EP-95-CA-475-F
	)	
Defendants.	)	

DECLARATION OF MICHAEL WILCZEWSKI

1. I, Michael Wilczewski, an currently a Group supervisor, office of Investigations, U.S. Customs Service, and have held this position in El Paso, Texas since 1989.

2. In approximately February 1992, 1 was reassigned from my former position as the Fraud Group Supervisor to that of Currency Group Supervisor, Office of Investigations, El Paso, Texas.

3. In March 1992, a Financial Task Force was established under my supervision as the Currency Group Supervisor, with Senior Special Agent Lawrence E. Frost being assigned an the Lead Agent for the Task Force.

4. The function of the newly created Task Force was the investigation of suspected money laundering operations that had a nexus with the El Paso, Texas area, and was composed of members of participating local, state, and federal law enforcement entities. The creation of the Task Force had absolutely nothing to do with continuing any investigation of the Plaintiffs.

5. My supervision of the Financial Task Force, and of Senior Special Agent Frost, consisted of attending regularly scheduled meetings and conferences; routinely reviewing all interim or significant

incident reports; discussing with Senior Special Agent Frost all proposed law enforcement activities, such as the proposed issuance of warrants and the direction of the overall investigations pending in the Task Force Office, and frequently being physically present to observe the activities of law enforcement actions in connection with such investigations.

6. I continued as the Currency Group Supervisor and as the supervisor of Senior Special Agent Frost until April 1994, when I was assigned to develop and implement an Intelligence Unit. I had no responsibilities or duties with the Financial Task Force after that time.

7. 1 have no knowledge that any false complaints were made to the FAA, Ford Motor Company,, by Senior Special Agent Frost to be incorporated in his affidavits in support of search warrants filed on or about November 19, 1993, or the Chrysler Corporation and Ford Motor Company employees, and Rasmark's prospective customers. I personally reviewed the Reports of investigation associated with the interview of Mr. Hines by Senior Special Agent Schroeder and Detective Holland and found it to be in accordance with policy and procedure.

8. I have no information that Beach, Hines, or Short gave false information to the Ford Motor Company investigators or that Mr. Sudomir gave false information to the Ford Motor Company and Senior Special Agent Frost for use in affidavits supporting the search warrants dated on or about November 19, 1993. My review of the investigative report does not reflect any statement by Mr. Sudomir in support of said warrants.

9. I have no direct knowledge of the allegations concerning El Paso Police Officer George L. Salas, other than that he was present on the night of the interview of Mrs. Rasmusson at the Customs Service Office at 9400 Viscount Blvd., El Paso, Texas. Mr. Salas was absolutely not a participant in the Financial Task Force.

10. On or about May 24, 1992, I was present at the Customs Service Office at 9400 Viscount Blvd., El Paso, Texas when Deborah

Rasmusson and Ian Maye arrived with a box of business records. I do not recall the exact number of agents who were at the Customs Service Office on that date, but I do not believe there were more than five Special Agents, myself, and Assistant Special Agent in Charge,, Donald Reay. I had to call out two additional Special Agents to observe and report activities at the business premises in case Special Agent Frost obtained a consent to search or possible evidence was going to be removed or destroyed. When it was determined that a Consent to Search was not going to be given, one of the Special Agents was released to go home, and the other, Senior Special Agent Schroeder, was asked to report to the office.

11. I did not accompany Deborah Rasmusson or Ian Maye into the Customs Service office building and have no personal knowledge of the events that occurred at that time. However, I was subsequently present for a short time when Senior Special Agent Frost asked Deborah Rasmusson if she would sign a Consent to Search for her business and residence. She was hesitant about signing the consent form and I asked Senior Special Agent Frost to step into the hall, where I told him that if Deborah Rasmusson no longer wished to cooperate in the investigation, then we should just conclude the interview and that she may later change her mind. I subsequently went back into the interview room and advised Deborah Rasmusson that the interview was over and that she could return in the future if she changed her mind and desired to cooperate. I then instructed Senior Special Agent Frost to escort Deborah Rasmusson and her son, Ian Maye out of the building.

12. I remained in the office building to call the Fire Department concerning the false fire alarm, as an emergency response to the false alarm would place the Firemen and the citizens of El Paso at risk needlessly. I have no personal knowledge of what transpired after Deborah Rasmusson and her son left the building and then proceeded to the nearby Diamond Shamrock convenience store. I subsequently accompanied Assistant Special Agent in Charge Donald Reay to the Diamond Shamrock store where Deborah Rasmusson and her son were awaiting their ride and the Special Agents present were directed to return to the office.

13. I have no knowledge that State National Bank officers were informed that Rasmark was a mere front corporation for money laundering and that Mark Rasmusson was a known major cocaine dealer.

14. I have no direct knowledge of any investigation of Special Agent in Charge Michael Lappe by the office of the Inspector General, Department of the Treasury, or of any false affidavits or perjured testimony by SAC Lappe. I was never interviewed by office of the Inspector General Investigators with respect to any such investigation. These allegations involved a different office, and as Mr. Olson was in a different office, we rarely communicated.

15. I have no personal knowledge of any discussions between Andrew Gantkessy and Ford Motor Company officials.

16. on November 22, 1993, I was present during the execution of a judicially approved search warrant of the residence of Mark and Deborah Rasmusson and then left to go to the business office of Rasmark Jet Charter,, Inc., where the judicially approved search had already begun. These were not "raids" or forced entry searches, but were conducted in a professional and business-like manner, in accordance with customs policies and procedures. I cannot remember the exact number of agents involved, but it was nowhere near 100.

17. During the search at the Rasmark business office, I told one of the clerical personnel of Rasmark that she could make copies of important documents while the search was being done, in order to maintain business operations. As the search of the premises was conducted, she made numerous copies of records she deemed necessary toward this end. In addition, I was advised that a copy of their computer system was obtained and the computer system, to my knowledge, was left in its original state and fully operational. I have no knowledge of any law enforcement officers conducting the search losing any of Rasmark's records or of any gun collection being found or removed from either the residence or business office location.

18. To my knowledge, the affidavits supporting the

applications for the search warrants on the Rasmusson residence and the business of Rasmark were prepared accurately and truthfully. I have no reason to believe that the information provided by informants was not reliable or accurate, or that documents specified in the affidavit concerning the residence were obtained by covert entry into the residence and not from the trash. I have absolutely no knowledge of any bogus or sham investigations of any of the Plaintiffs.

19. I have no personal knowledge of any Financial Task Force agent interfering with negotiations between Rasmark and Ford Motor Company or interfering in any other business relationships between Rasmark and Ford Motor Company.

20. I never received any complaints regarding any refusal to return Rasmark essential records, and I know that every effort was made to cause minimal disruption to the Rasmark business.

21. I have no personal knowledge of any allegations relating to an incident involving Mrs. Rasmusson at the El Paso Police Department Narcotics Division Headquarters on or about December 26, 1993, or an attack upon Mrs. Rasmusson and her son at a stoplight on or about January 1994, or a meeting by El Paso Police Department Detectives with school officials on or about March 1994, or an altercation involving El Paso Police Department Officers at Mrs. Rasmusson's residence during a birthday party for her son on or about December 12, 1994.

22. I have no knowledge of any conspiracy in persuading Texas Commerce Bank to refuse to open an account or loan money to Rasmark based on giving false information to the bank on or about December 7, 1994. 1 was no longer the Currency Group Supervisor or the supervisor of Senior Special Agent Frost at that time.

23. I have no direct knowledge of the seizure of Mrs. Rasmusson's car(s) on at least five separate occasions during or about 1995, or the arrests and prosecutions of Mrs. Rasmusson on or about August 8, 1993, December 1993, March 1995, June 1995, and November 1995.

26. I never heard of the complaint letters to the Congressional representatives, Mr. Mack's response to the letters, or of a group of pilots with complaints.

27. I did not participate in any searches, nor did I authorize or give instructions to anyone else to conduct any searches on June 16, 1993. In my entire career with the United States Customs Service, I have never heard of an occasion where a Customs dog was flown in a Citation aircraft or other Customs aircraft.

28. I do not know of any false information that was provided to any OCDETF committee, any company, any individual, or any member of the Judiciary in any matter involved with the investigation of the Plaintiffs. I have never asked nor have I allowed any employee to perjure then elves under any circumstances. I have never heard of anyone making any allegation of corruption that was met with contempt.

29. I was never advised by any agent of any of the agencies participating in the Financial Task Force that there were any problems with the investigation of the Plaintiffs.

30. I have never heard of any informant or informant information regarding the Plaintiffs as being unreliable other than in this lawsuit.

31. I have no direct knowledge or involvement with any of the matters addressed in the Congressional investigation of Customs. There were no allegations that related to me in any way and I was not a fact witness in any allegation of someone else. The thrust of this investigation was not related to the El Paso Customs office or personnel. I was not given notice as to any of the events involved with this matter.

32. I cannot recall whether any information involving Rasmark was on an OCDETF application.

33. I know that Agents of the U.S. Customs Service are instructed not to make promises to confidential informants regarding

rewards.

34. I have never participated in or heard of any conspiracy by anyone to violate any constitutional right of any of the Plaintiffs nor have I ever participated in or heard of any plan to shut down Rasmark. I have no knowledge of any cover up of anything regarding the Plaintiffs.

35. I was not at the Port of Entry on November 10, 1992, when Mrs. Rassmusson and her vehicle were the subjects of a border search. I was telephonically advised of the events by SA Frost when he concluded his investigative activities.

36. I have never participated in nor have I ever heard of the development of any tactic or strategy as described in the Plaintiff's plan A. plan B, or plan C. The Financial Task Force did not have theldrugs, or money to furnish anyone, nor was there ever any plan to get any drugs or money to furnish any of the Plaintiffs.

37. I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge.

Executed on the 2nd day of April, 1997.

Michael J. Wilczewski
Office of Investigations
U.S. Customs Service

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

MARK A. [sic] RASMUSSON, et al.,	§
	§
Plaintiffs,	§
v.	§
LAWRENCE E. FROST,	§
	§
Defendants.	§

AFFIDAVIT OF NEIL BAKER

1. My name is Neil Baker, I am over twenty-one years of age and competent to make this affidavit based on my personal knowledge, information, and belief. I have been served with a copy of the Complaint in the above entitled and numbered cause and this affidavit is given in connection with same.

2. I am a licensed peace officer in the state of Texas and am employed as a deputy sheriff with the El Paso County Sheriff's Department. I currently hold the rank of Detective. As part of my duties with the Sheriffs Department, I was temporar ily assigned to a federal task force which was conducting an investigation into illegal drug trafficking and money laundering. The task force was comprised mainly of federal law enforcement officers and I myself was cross deputized as a federal law enforcement officer, for the purposes of this investigation. Some of the targets of the investigation included Mark Rasmusson and Rasmark Jet Charter, Inc. The task force was headed by federal agents and it was these agents that directed the course of the investigation. My role within this task force was limited to retrieving trash at the El Paso Sanitation Department, conducting surveillance, and other minor investigative duties.

3. My participation in this investigation was within the

course and scope of my employment and constituted the performance of a discretionary function. At all times during this investigation, I acted in the good faith belief that my actions were in compliance with existing law. It is furt her my belief that the actions I took were consistent with the actions which a reasonably prudent peace officer would have taken in the same circumstances.

4. 1 did assist in the execution of a search warrant on the premises of Rasmark Enterprises Jn November of 1993. The search warrant, which was issued by a federal magistrate, was obtained by one of the federal officers assigned to this investigation. The warrant complied with all the legal requirements for the issuance of a search warrant, to the best of my knowledge. My participation in the execution of this warrant was the last act I performed in the investigation of the Rasmussons or Rasmark let Charter, Inc. At no time during my participation in this investigative effort did I ever engage in any conduct which was violative of the Plaintiffs' constitutional rights. Nor did I at any time observe any other officers, federal, state, or local, engage in any conduct which was violative of the Plaintiffs' rights. I did not conspire with any individuals to deprive any of the Plaintiffs in this lawsuit of their constitutional rights nor am I aware of any other individuals who may have entered into any similar type of conspiracy. It is my good faith belief that the investigation conducted against the Plaintiffs was a legally valid investigation.

/s/ NEIL BAKER

STATE OF TEXAS §
COUNTY OF EL PASO §

SUBSCRIBED AND SWORN TO before me on this the 17th day of June, 1996.

/s/ PATRICIA QUINTANILLA
Notary Public in and for the
State of Texas
Comm. Exp. 8-25-96

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

MARK A. RASMUSSON, et al.,	§	
	§	
Plaintiffs,	§	
v.	§	Cause No.
	§	EP-95-CA-475F
LAWRENCE E. FROST, et al.,	§	
	§	
Defendants.	§	

AFFIDAVIT OF JERRY KEITH

1. My name, is Jerry Keith, I am over twenty-one years of age and competent to make this affidavit based on my personal knowledge, information, and belief. I have been served with a copy of the Complaint in the above entitled and numbered cause and this affidavit is given in connection with same.

2. I am a retired employee of the E Paso County Sheriffs Department. During my employment with the Sheriff s Department, I was a licensed peace officer in the state of Texas and I retired with the rank of Detective. As part of my duties with the Sheriff s Department, I was temporarily assigned to a federal task force which was conducting an investigation into illegal drug trafficking and money laundering. The task force was comprised mainly of federal law enforcement officers and I myself was cross deputized as a federal law enforcement officer, for the purposes of this investigation. Some of the targets of the investigation included Mark Rasmusson and Rasmark Jet Charter, Inc. The task force was headed by federal agents and it was these agents that directed the course of the investigation. My role within this task force was limited to retrieving trash at the El Paso Sanitation Department, conducting surveillance, and other minor investigative duties.

3. My participation in this investigation was within the course and scope of my employment and constituted the performance of a discretionary function. At all times during this investigation, I acted in the good faith belief that my actions were in compliance with existing law. It is further my belief that the actions I took were consistent with the actions which a reasonably prudent peace officer would have taken in the same circumstances.

4. The last act I participated in, in assisting with this investigation occurred prior to November of 1993. At no time during my participation in this investigative effort did I ever engage in any conduct which was violative of the Plaintiffs' constitutional rights. Nor did I at any time observe any other officers, federal, state, or local, engage in any conduct which was violative of the Plaintiffs' rights. I did not conspire with any individuals to deprive any of the Plaintiffs in this lawsuit of their constitutional rights nor am I aware of any other individuals who may have entered into any similar type of conspiracy.

It is my good faith belief that the investigation conducted against the Plaintiffs was a legally valid investigation.

/s/ JERRY KEITH

STATE OF FLORIDA §
§
COUNTY OF BREVARD §

SUBSCRIBED AND SWORN TO before me on this the 21st day of June, 1996.

/s/ Sarah L. Blanton
Notary Public in and for the
State of Florida

My commission expires: 3/31/2000

[Excerpt]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

MARK B. RASMUSSON	§	
RASMARK JET CHARTER, INC.,	§	
	§	
PLAINTIFFS,	§	CIVILACTION
	§	EP-95-CA-475-F
vs.	§	
	§	
LAWRENCE E. FROST, ET AL.,	§	
	§	
DEFENDANTS.	§	

DEFENDANT GAIL BEACH'S ANSWERS TO ADMISSIONS PROPOUNDED BY PLAINTIFFS

ADMISSIONS

Request for Admission No. 1: Admit that on March 9, 1993 Special Agent Eric Mills and Special Agent Lawrence Frost conducted an interview with you.

ADMIT.

Request for Admission No. 2: Admit that on March 9, 1993 you stated to Special Agent Eric Mills and Special Agent Lawrence Frost that you first met Mark Rasmusson during 1986.

ADMIT.

Request for Admission No. 3: Admit that on March 9, 1993 you stated to Special Agent EricMills and Special Agent Lawrence Frost that at the

time you met Mark Rasmusson you had sub-contracted charter flights to him.

ADMIT.

Request for Admission No. 4: Admit that on March 9, 1993 you stated to Special Agent Eric Mills and Special Agent Lawrence Frost that Mark Rasmusson told you that he had purchased his aircraft with money he had inherited from his grandfather who was the inventor of the popsicle stick.

ADMIT.

Request for. Admission No. 5: Admit that on March 9, 1993 you stated to Special Agent Eric Mills and Special Agent Lawrence Frost that the Rasmussons were engaged in a 'kick back" scheme with Joe Sudomir and Andy Gantkessy.

DENY.

Request for Admission No. 6: Admit that on March 9, 1993 you stated to Special Agent Eric Mills and Special Agent Lawrence Frost that you were told by a former RASMARK pilot, Mark McAllister, the Mark Rasmusson stated, while under the influence of alcohol, that he (Rasmusson) keeps large amounts of money in bank(s) in the Cayman Islands.

ADMIT.

Request for Admission No. 7: Admit that on March 9, 1993 you stated to Special Agent Eric Mills and Special Agent Lawrence Frost that your salary from your air freight company has never exceeded $38,000.00 in one year.

ADMIT.

Request for Admission No. 8: Admit that on March 9, 1993 you state to

Special Agent Eric Mills and Special Agent Lawrence Frost that although charter and air freight rates can be very high the actual operator profit after all expenses is approximately 10 to 12 percent of operator income.

ADMIT.

Request for Admission No. 9: Admit that on March 9, 1993 you stated to Special Agent Eric Mills and Special Agent Lawrence Frost that you recommended that Lawrence Frost interview Steve Thorp of Taos, New Mexico.

ADMIT.

Request for Admission No. 10: Admit that on March 9, 1993 you stated to Special Agent Eric Mills and Special Agent Lawrence Frost that Steve Thorn is the brother of one of your business partners and that Mr. Thorn had information on Mark Rasmusson and an associate.

DENY.

[End of Admissions]

[Paragraph numbers added to text]

AFFIDAVIT OF GAIL BEACH

STATE OF TEXAS §
COUNTY OF EL PASO §

1. BEFORE ME, the undersigned authority on this day personally appeared GAIL BEACH, known to me to be the person whose signature is subscribed below and after being duly sworn did upon oath depose and state the following:

2. My name is GAIL BEACH. I am over the age of 18 and am fully competent to make this affidavit. I hereby state that I have personal knowledge of the facts stated herein and that these facts are true and correct.

3. On March 9, 1993, I was interviewed in El Paso, Texas, by U. S. Customs Special Agent Lawrence E. Frost and Eric Mills regarding Mark Rasmusson and Deborah Rasmusson concerning the matters alleged by the Plaintiffs in this litigation. At all times I responded truthfully and provided information in good faith.

3. After March 9, 1993, I had no further contact with any law enforcement agency, or personnel, either local, county, state, or federal, regarding Mark Rasmusson and Deborah Rasmusson, nor have I supplied any information to any such persons or agencies regarding Mark Rasmusson or Deborah Rasmusson, or the matters alleged by such

Plaintiffs in this litigation.

Further, Affiant sayeth naught."

/s/Gail Beach

SWORN AND SUBSCRIBED TO BEFORE ME the undersigned authority on this 31 day of March, 1997.

/s/ Notary

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

MARK B. RASMUSSON, ET AL.,	)	
	)	
Plaintiffs,	)	
	)	
V.	)	CIVIL ACTION
	)	NO. EP-95-CA-475-F
	)	
LAWRENCE E. FROST, EL AL.,	)	
	)	
Defendants.	)	

DECLARATION OF STEVEN PERKINS

"I, STEVEN E. PERKINS, declare and say:

1. I am a GS-1811 Criminal Investigator (or "Special Agent") of the United States Department of Justice, Drug Enforcement Administration (DEA). I have held this position since March 28, 1987.

2. I currently am assigned to DEA's Casper, Wyoming, Post of Duty. I have been in Casper since March 26, 1991. Prior to that, I was assigned to DEA's El Paso, Texas, District Office. I was assigned to that office form August 24, 1987 until march 25, 1991.

3. In November 1989, officials of the Texas Department of Safety informed DEA that they had been conducting an investigation of a large marijuana and cocaine trafficking organization headed by an individual named Jesus Flores, who operated a business known as Vista Remodeling. Subsequent to this meeting, DEA opened a Federal investigation of this organization which discovered evidence that the organization was trafficking in multi-ton quantities of marijuana and multi-hundred pounds of cocaine. The case subsequently became an Organized Crime Drug Enforcement Task Force (OCDETF)

investigation. See attachment 1, which is an authentic photocopy of the DEA-6, Report of Investigation, which initiated this case. I served as one of the case agents on the case.

4. The major targets of the investigation were Jesus Flores and his principal assistants in the trafficking organization. As set forth more fully below, plaintiff Mark Rasmusson became implicated as the investigation progressed; however, he was never a major target in the investigation.

5. The investigation revealed that plaintiff Mark Rasmusson owned an aircraft company known as "Rasmark Jet Charter Service." Substantial evidence was developed that the Flores organization was using plaintiff's aircraft company for flights. See attachments 2 - 8, which are authentic photocopies of DEA Reports of Investigation. Furthermore, investigation revealed that plaintiff Mark Rasmusson handled the arrangements for flights by Flores and his colleagues personally, rather than allowing the office staff to do so as he did with other customers, and that the paperwork which should have existed regarding these flights, such as flight plans and invoices, inexplicably was missing from plaintiff's files. See attachment 2 - 6. The investigation also revealed evidence that plaintiff knew that Flores was a drug trafficker. See attachments 7 - 8.

7. On September 19, 1990, I appeared before a Federal grand jury in El Paso, Texas, concerning the Jesus Flores investigation. The grand jury handed down indictments against nine defendants on that same date. Jesus Flores was one of the individuals indicted. Plaintiff Mark Rasmusson also was indicted for one count of aiding and abetting in drug trafficking activities. See attachment 9, which is an authentic photocopy of the DEA Report of Investigation pertaining to the indictment.

8. On September 26, 1990, Special Agent Thomas Lenox and I contacted plaintiff Mark Rasmusson and his attorney, Richard Esper, in El Paso, Texas. We made arrangements for Mark Rasmusson to surrender himself to our custody on September 27, 1990, which he did. See attachment 10, which is an authentic photocopy of the DEA Report of Investigation of the arrest. Plaintiff Mark Rasmusson was acquitted

of this charge at trial.

9. I deny plaintiffs' allegations that I fabricated any of the information recorded in DEA Reports of Investigation and that I presented fabricated evidence and testimony to the grand jury or at trial.

10. After leaving El Paso in March 1991, I no longer worked actively on the Flores investigation. I returned to El Paso for the Flores case trials and sentencings. Subsequent to the trials and sentencings, I received a telephone call from a prosecutor concerning a box of documents which Deborah Rasmusson apparently had surrendered to authorities. I offered my assistance, but was never contacted again. Approximately a year later, because of my familiarity with the case, I returned to El Paso to assist in interviewing a number of Flores' coconspirator who had recently been arrested. During that visit, I offered to provide assistance to the United States Customs Service on an investigation that they had opened on this matter, but I have not received any specific request for help.

11. I declare under penalty of perjury that the foregoing statements are true and correct."

May 30, 1996
Date

/s/ Steven E. Perkins
Special Agent
Drug Enforcement Administration

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

MARK B. RASMUSSON, ET AL.,	)	
	)	
Plaintiffs,	)	
	)	
V.	)	CIVIL ACTION NO.
	)	EP-95-CA-475-F
	)	
LAWRENCE E. FROST, EL AL.,	)	
	)	
Defendants.	)	

DECLARATION OF MICHAEL T. LAPPE

1. I, Michael T. Lappe, was the Special Agent in Charge of the United States Customs Office in El Paso, Texas, from May 19,1989 through October 16, 1994.

2. During the above mentioned time, I was responsible for the operation of six offices in two states and approximately 100 personnel. I have never met Mark B.Rasmusson or his spouse and I have never been to or near his business or residence. The investigation of Rasmark Jet Charter was part of a larger investigation into illegal money laundering and related criminal activities. I did not participate in the day-to-day investigative acivities of this case. I was briefed routinely on the progression of the overall investigation. Pursuant to the chain of command, the oversight and supervision of this case was the responsibility of the Case Agent, Lawrence Frost; the Group Supervisor, Michael Wilczewski; and the Assistant Special Agent in Charge, Donald Reay.

3. I was not involved with Special Agent Lawrence Frost's

Affidavits. The preparation of Affidavits and obtaining of Search Warrants during an investigation are normally done by a Case Agent under the supervision of a Group Supervisor. Having read the Affidavit, it appears to be in order.

4. I was the subject of an investigation conducted by Special Agent James F. Tighe, a Criminal Investigator assigned to the Department of Treasury, Office of Inspector General ("OIG"). I was cleared of all allegations of wrongdoing.

5. The letter dated July 26, 1993 (Exhibit 3 of Plaintiffs' Second Amended Original Petition) was drafted by Special Agent Lawrence Frost and routed through the chain of command before it was presented to me for my signature. As Special Agent in Charge, it was my policy to review and sign all outgoing correspondence. Special Agent Frost is an experienced Customs Agent who has always been reliable and professional in his work. I had no reason to question the information contained in the letter.

6. I was neither involved in nor do I have any personal knowledge of the remaining allegations contained in the Plaintiffs' Second Amended Original Petition.

7. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge."

August 1, 1996
Date

/s/ Michael T. Lappe'
Customs Attache
U.S. Customs Service

[Paragraph numbers added to text]

AFFIDAVIT OF CHRIS HINES

STATE OF TEXAS §
COUNTY OF EL PASO §

BEFORE ME, the undersigned authority on this day personally appeared CHRIS HINES, known to me to be the person whose signature is subscribed below and after being duly sworn did upon oath depose and state the following:

1. My name is CHRIS HINES. I am over the age of 18 and am fully competent to make this affidavit. I hereby state that I have personal knowledge of the facts stated herein and that these facts are true and correct.

2. On March 16, 1993, I was interviewed in El Paso, Texas, by U. S. Customs Special Agent Fred Schroeder and El Paso Police Officer James Holland regarding Mark Rasmusson and Deborah Rasmusson concerning the matters alleged by the Plaintiffs in this litigation. At all times I responded truthfully and provided information in good faith.

3. After March 16, 1993, I had no further contact with any law enforcement agency, or personnel, either local, county, state, or federal, regarding Mark Rasmusson and Deborah Rasmusson, nor have I supplied any information to any such persons or agencies regarding Mark Rasmusson or Deborah Rasmusson, or the matters alleged by such Plaintiffs in this litigation.

4. Further, Affiant sayeth naught."

/s/ CHRIS HINES

SWORN AND SUBSCRIBED TO BEFORE ME the undersigned authority on this 31st day of March 1997.

/s/

[Excerpt]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

MARK B. RASMUSSON	§	
RASMARK JET CHARTER, INC.	§	
	§	
PLAINTIFFS,	§	CIVIL ACTION
	§	
vs.	§	EP-95-CA-475-F
	§	
LAWRENCE E. FROST, ET AL.,	§	
	§	
DEFENDANTS.	§	

DEFENDANT CHRIS HINES' ANSWERS TO ADMISSIONS PROPOUNDED BY PLAINTIFFS

ADMISSIONS

Request for Admission No. 1: Admit that on March 16, 1993, Special Agent Fred Schroeder and El Paso Police Detective James Holland conducted an interview with you.

ADMIT

Request for Admission No. 2: Admit that on March 16, 1993, you stated to Special Agent Fred Schroeder and El Paso Police Detective James Holland that you were employed by Rasmark jet Charter from November, 1990 through September, 1991.

ADMIT

Request for Admission No. 3: Admit that on March 16, 199.3, you

stated to Special Agent Fred Schroeder and El Paso Police Detective James Holland that shortly after you started working for Rasmark Jet Charter, Debra, Rasmusson gave you a check for $4,000.00 and told you to cash the check and bring the money back to her.

ADMIT

Request for Admission No. 4: Admit that on March 16, 1993, you stated to Special Agent Fred Schroeder and El Paso Police Detective James Holland that when you returned with the money to Debra Rasmusson you asked if the money was a Christmas bonus for all of the employees.

ADMIT

Request for Admission No. 5: Admit that on March 16, 1993, you stated to Special Agent Fred Schroeder and El Paso Police Detective James Holland that Debra Rasmusson stated that it was not.

ADMIT

Request for Admission 6: Admit that on March 16, 1993, you stated to Special agent Fred Schroeder and El Paso Police Detective James Holland that Debra Rasmusson stated that the money was for a person who had given them a lot of business.

DENY

Request for Admission 7: Admit that on March 16, 1993, you stated to Special Agent Fred Schroeder and El Paso Police Detective James Holland that you believe the money was going to Andy Gantkessy, the Ford Motor Company contact used by the Rasmussons in El Paso, Texas.

ADMIT

Request for Admission 8: Admit that on March 16, 1993, you stated to Special Agent Fred Schroeder and El Paso Police Detective James

Holland that on another occasion Debra Rasmusson gave you a check to cash.

ADMIT

Request for Admission 9: Admit that on March 16, 1993, you stated to Special Agent Fred Schroeder and El Paso Police detective James Holland that in the ledger for the check, Debra Rasmusson wrote the notation "Chris's Commission".

ADMIT

Request for Admission 10: Admit that on March 16, 1993, you stated to Special Agent Fred
Schroeder and El Paso Police Detective James Holland that when you questioned Debra Rasmusson about the check, she stated that the money was not for you.

ADMIT

Request for Admission 11: Admit that on March 16, 1993, you stated to Special Agent Fred Schroeder and El Paso Police Detective James Holland that Debra Rasmusson went on to state that she owed Andy Gantkessy some money, but could not put his name on the check.

DENY

Request for Admission 12: Admit that on March 16, 1993, you stated to Special Agent Fred Schroeder and El Paso Police Detective James Holland that when he took bills or invoices for the Ford account he was told not to give the paper work to anyone other than Gantkessy.

ADMIT

Request for Admission 13: Admit that on March 16, 1993, you stated to Special Agent Fred Schroeder and El Paso Police Detective James Holland that Gantkessy and Rasmark Jet Charter were billing Ford

for flights that did not occur.

DENY

Request for Admission 14: Admit that on March 16, 1993, you stated to Special Agent Fred Schroeder and El Paso Police Detective James Holland that you were given an overdraft notice from the First Bank of Avon, Colorado, account number 32-1044.

ADMIT

Request for Admission 15: Admit that on March 16, 1993, you stated to Special Agent Fred Schroeder and El Paso Police Detective James Holland that the account is in the name of Mark and Debbie asmusson, 6825 Convair, El Paso International Airport, El Paso, Texas.

DENY

Request for Admission 16: Admit that on March 16, 1993, you stated to Special Agent Fred Schroeder and El Paso Police Detective James Holland that on one occasion a Mexican male, accompanied by a woman and children hired Rasmark Jet Charter to fly them to the Cayman Islands.

ADMIT

Request for Admission 17: Admit that on March 16, 1993, you stated to Special Agent Fred Schroeder and El Paso Police Detective James Holland that Debra Rasmusson and the man went into her office, closed and locked the door.

ADMIT

Request for Admission 18: Admit that on March 16, 1993, you stated to Special Agent Fred Schroeder and El Paso Police Detective James

Holland that the man paid Debra Rasmusson in cash, approximately $13-14,000.00.

ADMIT

Request for Admission 19: Admit that on March 16, 1993, you stated to Special Agent Fred Schroeder and El Paso Police Detective James Holland that Debra Rasmusson came out of the office after the man left and showed you the money.

ADMIT

Request for Admission 20: Admit that on March 16, 1993, you stated to Special Agent Fred Schroeder and El Paso Police Detective James Holland that you told Debra Rasmusson that it was not a very good way for the man to pay if it was a business trip, because he would have no records.

ADMIT

Request for Admission 21: Admit that on March 16, 1993, you stated. to Special Agent Fred Schroeder and El Paso Police Detective James Holland that Debra Rasmusson told you not to worry about the money it was none of his concern.

ADMIT

[End of Admissions]

EXCERPTS FROM USCS REPORT NO. 025

REQUESTED BY: BRAZELL, BRUCE M

OFFICIAL USE ONLY

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE
REPORT OF INVESTIGATION

1. TECS ACCESS
   CODE [redacted]

2. PAGE 1

3. CASE NUMBER [redacted]

4. TITLE: [redac'ed]

5. CASE STATUS: INTERIM RPT

6. REPORT DATE
   091792

7. DATE ASSIGNED
   082890

8. CLASS
   [redacted]

9. PROGRAM CODE
   [redacted]

10. REPORT NO.
    025

11. RELATED CASE NUMBERS: [blank]

12. COLLATERAL REG: [blank]

13. TYPE OF REPORT: SURVEILLANCE REPORT

TOPIC: Results of Surveillance of Rasmark Jet Charter for September 16, 1992

14. SYNOPSIS:

This report documents surveillance results for September 16, 1992 in the above captioned investigation.

15. DISTRIBUTION:
SACEP RIBIH HQDY HQFI

16. SIGNATURE: [blank]
MILLS ERIC E
SPECIAL AGENT

17. APPROVED: [blank]
WILCZEWSKI MICHAEL J
OE GRP SUPERVISOR

18. ORIGIN OFFICE: EP
EL PASO - SAC

19. TELEPHONE: 915 540 5739

20. TYPIST: MILLS

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PAGE 2 - CONTINUATION

[Paragraph numbers added to text]

DETAILS OF INVESTIGATION:

1. The following agents were assigned to surveillance activity September 16, 1992:

SA Eric E. Mills
CPO Lue Jackson
SA Dan Levick
SA Larry Harrell
SA Dante Orate
SA C.W. Moore
SA Cynthia Mandujan
SA Daniel Ramirez

2. The following observations were made an September 16, 1992:

0600hrs Two white male adults (WMA's) were observed apparently preparing aircraft N25TK for flight. (SA Mills had received notification at about 0530hrs, . . .[redacted], that N25TK had filed a proposed flight plan from El Paso to Chihuahua, MX).

0633hrs The two WMA's fuel aircraft N821AW.

0655hrs The black with gold trim Mercury, TX LIC/FTK38K, departed RASMARK from inside the aircraft hanger and went west on Boeing Dr. Vehicle was operated by a WMA. LIC/FTK38K is improperly displayed on the Mercury. It should be displayed on a 1984 Ford 2 door, registered to Gary Hartman of 2125 Tompkins, Grand Prarie,[sic] TX.

0740hrs Both WMR's observed earlier servicing aircraft

depart in the white Ford van, TX LIC/3084QL.

0740hrs Two males, possibly pilots for RASMARK, arrive. #1 an hispanic male adult (HMA), 505, black hair, arrived in black Nissan pickup, and #2 WMA, 600, black receding hair.

0825hrs A white female adult (WFA), possibly Debra RASMUSSON, arrived in the black Mercury with gold trim.

0840hrs Debra RASMUSSON departed driving the black Mercury, northbound on American Dr.

0845hrs Mark RASMUSSON arrived driving the green Ford Bronco, wearing black jeans and a gray shirt.

PAGE 3 - CONTINUATION

6855hrs A WMA arrived in the RASMARK parking lot driving a Dodge Ran, TX LIC/505XFH, and read the newspaper sitting in the parking lot.

0905hrs Aircraft N821AW was moved into the hanger.

0907hrs A white Chevrolet Blazer (believed to be the same as that observed on 091592) with paper license, arrived at RASMARK. The Blazer was being operated by HMA, clean-cut, carrying a cellular telephone.

0930hrs Debra RASMUSSON and an HMA, 20yrs, 506, 145, black hair, white t-shirt with no sleeves arrive in black Mercury with gold trim.

1215hrs A red Mercedes 560SL convertible bearing AZ LIC/HSR995, Operated by two HMA's arrived at RASMARK and both men went inside. They were inside a short time and then departed westbound on Boeing Drive. Vehicle is of TECS record by Riverside OE., narcotics smuggling alleged. . . . [redacted]

1300hrs Debra RASMUSSON and HFA (who has been seen operating a white Ford Escort, TX LIC/GNC12V), departed RASMARK in the black Mercury and went to the Circle K store at Hawkins and Montana, and returned to RASMARK at 1309hrs.

1320hrs Mark RASMUSSON and WMA, 30's, 602, 200, black curly hair, departed RASMARK and went westbound on Boeing to Smitty's Bar-B-Que, which is located near the intersection of Airport and Mescalero.

1328hrs Debra RASMUSSON departed driving the black Mercury. She was last observed going northbound on American. She was not followed on this departure.

1330hrs A green BMW bearing TX LIC/GWK39T arrives at RASMARK. A WMA, 600, 190, 40's, brown hair maroon shirt was driving. . . .[redacted]

PAGE 4 - CONTINUATION

1545hrs The red Mercedes departed with the white male driving, Hector BARRERA riding in the passenger seat and a 7-8 year old WM was riding in back. Surveillance last saw the vehicle go into Airport Self Storage on Boeing Dr. (a computer card is required to open the automatic gate at this location). The vehicle returned to RASMARK at 1550hrs.

1547hrs Debra RASMUSSON departed driving the green Bronco. She was last seen traveling southbound on Airway Blvd.

1605hrs The red Mercedes, WMA driving, Hector BARRERA passenger, 7-8 year old in back, departed westbound on Boeing, then southbound on Airway Blvd, to Western Beverage. The occupants went inside Western Beverage and made a purchase. They returned to the vehicle and departed southbound on Airway Blvd., then westbound on Gateway, entered 1-10 westbound, exited 1-10 at the Juarez exit and proceeded southbound into Mexico.

1620hrs Debra RASMUSSON returned to RASMARK driving the green Bronco, in the company of a white female, possibly a juvenile, with blonde hair, carrying a backpack.

1628hrs A white Toyota pickup with white Leer shell, NM partial LIC/023____, WMA, 510, 170, blonde hair, wearing shorts and orange tank top, entered RASMARK. Departed at 1636hrs.

1645hrs A man believed to be David CHAVEZ departed driving TX LIC/077YVU, a light blue Nissan 200SX.

1712hrs The green Bronco, with two white sales, departed westbound on Boeing Dr., then southbound on Airway Blvd., then eastbound an Viscount Blvd., then into the Bob Hoy Auto Dealership. Surveillance lost at The Hoy Auto Dealership.

1725hrs The green Bronco returned to the ramp area at RASMARK, with only one WMA.

1727hrs Debra RASMUSSON's orange Mercedes convertible was located

at The Bob Hoy Automotive service area.

1735hrs A red Chevrolet Corvette was observed in the RASMARK parking lot, falsely bearing TX LIC/606XFZ. That license plate should be on a 1979 Pontiac 2 door registered to Marc B. Forest, 1730 Jim Thorpe, El Paso, TX.

1735hrs Debra RASMUSSON's orange Mercedes returned to RASMARK.

1742hrs A black over yellow Cadillac four door, TX LIC/007XFN, operated by one HMA, arrived at RASMARK. HMA driver had prosthesis hooks on both arms. Vehicle is registered to THE INVESTIGATORS, INC., Jay J. Armes, 1717 Montana Ave., El Paso,

TX. Jay Armes is an elected city official who is known to be a double amputee. Jay Armes, Mark RASMUSSON, Debra RASMUSSON, and an unidentified blonde female, all walked out on the ramp together and went inside the RASMARK Falcon Jet.

1755hrs Surveillance noticed a photographer taking pictures of the building from various angles. The photographer departed in a yellow Ford 2 door from the parking lot of the neighboring business, Air Transports Inc.

1830hrs Two white males, employees of RASMARK, loaded several long pieces of lumber, 2 empty plastic 5 gallon gas cans, a silver tank, possibly a fire extinguisher, a large gray tool box, into the white Ford van, TX LIC/3084QL. It appeared that there was possibly a motorcycle with a yellow gas tank already in the van. The individuals also placed a four wheel ATV into the van. It appeared that the employees locked the vehicle after loading the above items. A total of four tool boxes went into the van.

1837hrs Jay Areas met with the driver of the Red Corvette and then both the Corvette and Jay Armes in the yellow Cadillac, departed RASMARK.

1850hrs A blue Ford pickup, extra cab with 4X4, TX paper LIC/P8896, that has been seen at RASMARK numerous times, arrived. HMA, late 40's, 508, 150, glasses and cellular phone, went inside for a short time, then came back out and used a key to lock the business door.

Surveillance ended at 1915hrs with Mark and Debra RASMUSSON still inside the offices at RASMARK

[End of Excerpts]

EXCERPTS FROM USCS REPORT OF INVESTIGATION NO. 064

REQUESTED BY: BRAZELL, BRUCE M

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REPORT OF INVESTIGATION

1. TECS ACCESS
   CODE [redacted]

2. PAGE 1

3. CASE NUMBER [redacted]

4. TITLE: [redacted]

5. CASE STATUS: INTERIM RPT

6. REPORT DATE
   032293

7. DATE ASSIGNED
   082890

8. CLASS
   [redacted]

9. PROGRAM CODE
   [redacted]

10. REPORT NO.
    064

11. RELATED CASE NUMBERS: [blank]

12. COLLATERAL REG: [blank]

13. TYPE OF REPORT: MEMO OF INTERVIEW / INVESTIGATIVE FINDINGS

TOPIC: INTERVIEW OF GAIL BEECH [sic] REGARDING MARK AND DEBORAH RASMUSSON

14. SYNOPSIS:

On March 9, 1993 Special Agents Lawrence Frost and Eric Mills of the Office of the Special Agent in Charge, El Paso, Texas interviewed Gail BEECH owner of AERO FREIGHT of El Paso, Texas. This interviewed was held in regard to BEECH [sic]'s relationship with Mark and Deborah RASMUSSON.

15. DISTRIBUTION: SACEP RIBIH HQDY HQFI

16. SIGNATURE: [blank]
FROST LAWRENCE E
SPECIAL AGENT

17. APPROVED: [blank]
WILCZEWSKI MICHAEL J
OE GRP SUPERVISOR

18. ORIGIN OFFICE: EP EL PASO - SAC

19. TELEPHONE: 915 540 5700

20. TYPIST: FROST

[Paragraph numbers added to text]

DETAILS OF INVESTIGATION:

1. On March 9, 1993 Special Agents Lawrence Frost and Eric Mills of the Office of the Special Agent in Charge, El Paso, Texas conducted an interview with Gail BEECH, owner of AERO FREIGHT of El Paso, Texas. Gail BEECH is known to have had a business relationship with Mark and Deborah RASMUSSON. The purpose of this interview was to gain all available background information on the RASMUSSON.

2. BEECH stated that she first met Mark RASMUSSON during 1986. BEECH stated that at that time RASMUSSON was residing in Kenosha, Wisconsin and that BEECH had sub-contracted charter flights to RASMUSSON. BEECH stated that during her initial contract with Mark RASMUSSON he told her that he had purchased his aircraft with money he had inherited from his grandfather who was the inventor of the popsicle stick.

3. BEECH stated that in 1987 she placed RASMUSSON under exclusive contract to her business due to the fact that the air freight charter business was experiencing a "boom".

4. BEECH stated that during either June or July of 1987, Mark RASMUSSON and Bobby Stroop went on a vacation together to Alaska. (Note: BEECH stated that Stroop is the owner of Ox Boxing in Las Vegas, Nevada). BEECH stated that upon RASMUSSON's return to El Paso he told her that he and Stroop had gone to a topless night club in Alaska where they had paid $400.00 to a topless dancer identified as Deborah Maye. RASMUSSON further related to BEECH that Stroop had hired Maye and transported her to Las Vegas to entertain his (Stroop's) boxers.

5. BEECH further stated that during September, 1987 Mark RASMUSSON and George Arnold traveled to Las Vegas to "party". Mark was to meet Deborah Maye and Arnold was to have been entertained by another female.

6. Upon Arnold and RASMUSSON returning to El Paso, Arnold told BEECH that when he (Arnold) and RASMUSSON were in Las Vegas, Maye had her two daughters with her. Arnold told BEECH that all parties were in a motel room, when Maye, Arnold, and Arnold's escort went to purchase beverages. The two daughters who were approximately 10 and 12 years old were left in the care of Mark RASMUSSON. Arnold told BEECH that when he (Arnold) and the women returned to the motel room they found Mark RASMUSSON in bed, molesting the older of Maye's daughters.

7. BEECH stated that approximately two weeks after this incident was alleged to have happened, Mark RASMUSSON and Deborah Maye were married and RASMUSSON signed one half of all of his personal property and the air freight business over to Deborah Maye-RASMUSSON

8. BEECH stated that George Arnold is currently living and working as a pilot in either Fort Lauderdale or Miami, Florida. BEECH stated that she would check with sources and notify SA Frost of where Arnold could be located.

9. BEECH further alleged that George Arnold had utilized a Cessna 210 that belonged to Mark RASMUSSON to smuggle and transport marijuana.

10. BEECH stated that her business relationship with Mark RASMUSSON continued after the RASMUSSON were married. However, BEECH stated that the relationship changed as Deborah RASMUSSON struggled to take control of Mark RASMUSSON's business activities through 1988. BEECH stated that during the time that she had a business relationship with Mark RASMUSSON she paid all of his American Express Credit Card bills and held money in reserve for maintenance on RASMUSSON's aircraft. BEECH stated that she maintained this financial arrangement with Mark RASMUSSON due to the fact that Mark RASMUSSON is totally irresponsible with money, his only interest appears to be having a good time and living well.

11. BEECH stated that in the fall of 1989, Deborah

RASMUSSON dissolved the business relationship between BEECH and the RASMUSSON's. BEECH stated that as soon as the RASMUSSON (DBA Rasmark Air Charter) went out on their own it became very clear that Deborah RASMUSSON was the "brains of the operation".

12. BEECH stated that when the relationship between herself and the RASMUSSON was severed, the RASMUSSON hired one of her (BEECH's salesmen, Chris Hines, for $500.00 more per month than BEECH had been paying him.).

13. BEECH stated that after the severance of the business relationship, Deborah RASMUSSON frequently told people at the El Paso Airport that she (Deborah) was the "Queen of Air Freight in El Paso". BEECH stated that DEBORAH carried out a campaign of telephone harassment and vandalism to vehicles against other air freight operators who did anything of which she (Deborah RASMUSSON) disapproved.

14. BEECH stated that prior to the severance of the relationship with Rasmark she (BEECH) had the air freight contract with Ford Favesa in El Paso.

15. BEECH stated that the Ford Favesa contract was administrated in the El Paso/Juarez area by Joe Sudomir and Andy Gantkessy. BEECH stated that the Favesa warehouse is on Durazno Street in El Paso and the offices are located on Butterfield Trail in El Paso. BEECH stated that when she had the air freight contract with Ford Favesa it was worth approximately six million dollars in business per year.

16. BEECH stated that the RASMUSSON were engaged in a "kick back" scheme with Sudomir and are currently engaged in such a scheme with Gantkessy.

17. BEECH stated that Deborah RASMUSSON was paying Sudomir approximately $1,000.00 per trip which Sudomir brokered through Rasmark for Ford Favesa. BEECH stated that Sudomir and Deborah RASMUSSON had a falling out and RASMUSSON refused to pay Sudomir his "kick back". BEECH stated that as this dispute

became more heated, Deborah RASMUSSON reported an alleged incident(s) of sexual harassment by Sudomir to Ford Security. Subsequent to Deborah RASMUSSON's complaint, Sudomir was transferred by Ford to a plant in the State of Missouri.

18. BEECH further stated that upon the removal of Sudomir, Gantkessy took over as the person in charge of air freight operations for Ford Favesa. BEECH alleges that Gantkessy was sexually compromised by Deborah RASMUSSON, soon thereafter, Gantkessy began accepting "kick backs" from Rasmark.

19. BEECH stated that when she and other air freight operator had the Favesa contract, Favesa was very difficult to work with as they were very demanding in matters relating to flights being on time and merchandise being delivered in perfect condition, etc. BEECH stated that since Rasmark has had the contract they (Rasmark) have been allowed to run hours late, damage merchandise, etc.

20. BEECH stated that she was told by a former Rasmark pilot, Mark McAllister, that Mark RASMUSSON stated, while under the influence of alcohol, that he (RASMUSSON) keeps large amounts of money in bank(s) in the Cayman Islands.

21. BEECH stated that Christopher Hines told her that on one occasion, Hines saw Deborah RASMUSSON receive a large amount of currency from a male customer. Hines stated that this currency was payment for a flight for the male customer, his wife and two children to the Cayman Islands, then return and pick them up in four days and return them to El Paso. Hines stated to BEECH that Deborah RASMUSSON made numerous remarks about what she was going to do with the currency, when Hines remarked to Deborah RASMUSSON that the money needed to be entered in the company books, RASMUSSON laughed and placed the currency in her purse.

22. Hines told BEECH that once a month he was sent to the bank by Deborah RASMUSSON to obtain a cashier's check for the sum of $2,500.00 which was alleged to be the RASMUSSON's house payment. The payment for the RASMUSSON residence was then made

to the owner of Dove Motors.

23. (Note: The owners of Dove Motors, are known by special agents to have been Joe and Pete Seaverns. Pete Seaverns was indicted and eventually testified for the Government in the Jesse Flores case in which Mark RASMUSSON was a co-defendant.)

24. BEECH stated that in 1988 or 1989 two Young Mexican males, "dripping in gold" came to her business to discuss leasing a Lear Jet, bearing FAA registration number N7GP, to BEECH's air freight business. BEECH stated that these two males identified themselves as Guillermo Portillo and his Corporate Attorney, Arturo Taraby. BEECH stated that she declined to do business with these two individuals as she felt they fit the profile of controlled substance traffickers. BEECH stated that very shortly after her contact with Taraby (Tarabi) and Portillo, they forged a business relationship with Mark RASMUSSON.

25. BEECH stated that she has been told that prior to Jesse Flores' incarceration he made weekly flights with Rasmark, these flights were paid for in cash by Flores. BEECH stated that the flights of which she knew the destination included, Los Angeles, Portland (OR), Detroit and Pontiac (MI). BEECH stated that the co-pilot for Mark RASMUSSON on these flights was Jim Young (who is currently in the Dallas area) and Jerry Burnett.

26. BEECH stated that the information she has received is that if Mark RASMUSSON is making a flight for illegal purposes, the co-pilot will be a subject named Huysman who is a foreign national and was hired by Rasmark from the North American Institute of Aviation in BEECH stated that Rasmark hires Young pilots from North American Institute of Aviation on a frequent basis. Rasmark allegedly charges large sums of money to allow the pilots to get their type rating in Rasmark aircraft. After these student pilots return to their home country Rasmark allegedly continues to use their names on pilot duty sheets in order to avoid evidence of violations of Federal Aviation Administration (FAA) regulations relating to crew rest, etc.

27. BEECH stated that she has been told by several sources

involved in the aviation industry in El Paso that Rasmark is paying pilots $100.00 per violation of FAA regulations which benefits the company.

28. BEECH stated that she has been told that Blanca Avelar (Rasmark secretary) was terminated by Mark RASMUSSON after an incident in November, 1992 during which Avelar and Deborah RASMUSSON returned from Mexico while intoxicated and RASMUSSON's Mercedes Benz automobile was seized by U.S. Customs Inspectors under "zero tolerance" guidelines.

29. BEECH stated that Hines had told her that the RASMUSSON were being allowed to "float" checks for as such as $50,000.00 by State National Bank.

30. BEECH stated that the RASMUSSON are living a lifestyle which indicates income well above the means of air freight operators in the El Paso area. BEECH stated that her salary from her air freight company has never exceeded $38,000.00 in one year. BEECH stated that although charter and air freight rates can be very high the actual operator profit after all expenses is approximately 10 to 12 percent of operator income.

31. BEECH recommended that agents contact Christopher Hines, Steve Thorn and Mark McAllister for additional information on the RASMUSSON.

[End of Excerpts]

EXCERPTS FROM USCS REPORT NO. 066

REQUESTED BY: BRAZELL, BRUCE M

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REPORT OF INVESTIGATION

1. TECS ACCESS
   CODE [redacted]

2. PAGE 1

3. CASE NUMBER [redacted]

4. TITLE: [redacted]

5. CASE STATUS: INTERIM RPT

6. REPORT DATE
   032293

7. DATE ASSIGNED
   082890

8. CLASS
   [redacted]

9. PROGRAM CODE
   [redacted]

10. REPORT NO.
    066

11. RELATED CASE NUMBERS: [blank]

12. COLLATERAL REG: [blank]

13. TYPE OF REPORT: MEMO OF INTERVIEW / INVESTIGATIVE FINDINGS

TOPIC: INFORMATION RECEIVED FROM STEVE THORN REGARDING DONALD M JOSEPH

14. SYNOPSIS:

On March 9, 1993, Special Agents Lawrence Frost and Eric Mills of the Office of the Special Agent in Charge, El Paso, Texas interviewed Gail BEECH of AERO FREIGHT INC.

During the course of this interview BEECH suggested that agents should contact Steve THORN of Taos, New Mexico regarding information about one of Mark RASMUSSONs associates.

On March 15, 1993 Special Agent Lawrence Frost conducted a telephone interview with THORN. This report details the results of that interview.

15. DISTRIBUTION:
SACEP RIBIH HQDY HQFI

16. SIGNATURE: [blank]
FROST LAWRENCE E
SPECIAL AGENT

17. APPROVED: [blank]
WILCZEWSKI MICHAEL J
OE GRP SUPERVISOR

18. ORIGIN OFFICE: EP
EL PASO - SAC

19. TELEPHONE: 915 540 5700

20. TYPIST: FROST

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[Paragraph numbers added to text]

DETAILS OF INVESTIGATION:

1. On March 9, 1993, Special Agents Lawrence Frost and Eric Mills of the Office of the Special Agent in Charge, El Paso, Texas, interviewed Gail Beech, owner of Aero Freight Inc. of El Paso, Texas. During the course of this interview Beech recommended that special agents contact Steve THORN of Taos, New Mexico (telephone 505-776-8427). Beech stated that THORN is the brother of one of her (Beech's) business partners and that THORN had information on Mark RASMUSSON and an associate.

2. On March 15, 1993 Special Agent Lawrence Frost contacted Steve THORN via telephone. Special Agent Frost conducted an interview of THORN regarding THORN's knowledge of Mark RASMUSSON et al.

3. THORN stated he and his wife were at a wedding reception at the Holiday Inn in Taos, New Mexico during October, 1992. During the course of this occasion, THORN met a male subject named Don or Ron JOHNSON (per THORN's recollection).

THORN described this person as a white male, approximately five feet teen inches tall, thin, balding but wearing a pony tail, a large nose and wearing glasses. THORN stated that at the time of this contact "JOHNSON" appeared to be under the influence of alcohol.

4. THORN stated that he told "JOHNSON" that members of his (THORN's) family had invested in an air freight company (AERO FREIGHT INC) in the El Paso area after "JOHNSON" had mentioned being associated with RASMARK Air Charter. THORN stated that "JOHNSON" was obnoxious and stated that RASMARK was going to run all other air charters in El Paso out of business.

5. THORN further stated that as the conversation continued "JOHNSON" stated that he was from Wickenberg, Arizona and that his parents were close personal friends of the parents of (former) Vice President of the United States Dan Quaye.

6. THORN stated that "JOHNSON" stated that he had recently returned from a flight in Mexico with Mark RASMUSSON during which RASMARK had flown entertainer Kenny ROGERS about Mexico. "JOHNSON" continued that he and Mark RASMUSSON were flying controlled substances and drug money "all over the place" and that DEA is aware of their activities but can't catch them. "JOHNSON" repeated that "DEA will never catch us" (reference "JOHNSON" and RASMUSSON) 3 or 4 times during the course of the conversation with THORN.

7. THORN stated that "JOHNSON" also indicated that nothing could be done to stop he and RASMUSSON due to his ("JOHNSON's") alleged association with Dan QUAYLE.

8. THORN stated that "JOHNSON" spoke and behaved as though he were a major part of the RASMARK company and as though he was big in "the Organization". THORN stated that he felt that "JOHNSON's" loose talk was an attempt to impress female guests at the reception.

9. Based on THORN's description of "JOHNSON" Special

Agent Frost believes this person to be RASMUSSON associate Donald Mitchell JOSEPH. JOSEPH is listed by RASMARK as an employee of the Charter Company and is authorized El Paso Airport identification and ramp privileges as an employee of RASMARK. JOSEPH has been observed accompanying Deborah RASMUSSON on RASMARK aircraft flights to Wickenburg, Arizona. A vehicle registered to JOSEPH with a Flagstaff, Arizona address has been seen at the RASMUSSON residence. (Reference surveillance reports under this case number by Special Agent Eric Mills).

10. Information from other sources during the course of this investigation have referred to JOSEPH as a "middle aged hippy with a lot of money". These sources have also indicated that JOSEPH regularly travels in Mexico with Mark RASMUSSON aboard RASMARK aircraft.

11. Special Agents are in possession of identification and surveillance photos of JOSEPH. An attempt will be made to obtain a photograph identification from THORN in the near future.

[End of Excerpts]

EXCERPTS FROM USCS REPORT NO. 073

REQUESTED BY: BRAZELL, BRUCE M

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UNITED STATES CUSTOMS SERVICE
REPORT OF INVESTIGATION

1. TECS ACCESS
   CODE [redacted]

2. PAGE 1

3. CASE NUMBER [redacted]

4. TITLE: [redacted]

5. CASE STATUS: INTERIM RPT

6. REPORT DATE
   033093

7. DATE ASSIGNED
   082890

8. CLASS
   [redacted]

9. PROGRAM CODE
   [redacted]

10. REPORT NO.
    073

11. RELATED CASE NUMBERS: [blank]

12. COLLATERAL REG: [blank]

13. TYPE OF REPORT: MEMO OF INTERVIEW
TOPIC: INTERVIEW OF HINES

14. SYNOPSIS:

On March 16, 1993, agents from the Special Agent in Charge El Paso, Texas and the El Paso Police Department interviewed Chris Hines about his former employer, Rasmark Jet Charter Service, El Paso, Texas. Hines worked as a Marketing Director for a short time.

15. DISTRIBUTION:
SACEP RIBIH HQDY HQFI

16. SIGNATURE: [blank]
SCHROEDER FRED
SPECIAL AGENT

17. APPROVED: [blank]
WILCZEWSKI MICHAEL J
OE GRP SUPERVISOR

18. ORIGIN OFFICE: EP
EL PASO - SAC

19. TELEPHONE: 915 540 5700

20. TYPIST: SCHROEDER

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Page 2 -- CONTINUATION

[Paragraph numbers added to text]

DETAILS OF INTERVIEW:

1. On March 16, 1993, Special Agent Fred Schroeder and El Paso Police Officer James Holland interviewed Chris Hines at his residence in El Paso, Texas. Hines stated that he was hired by Debra Rasmusson in November of 1990 as a Marketing Director with a starting salary of $36,000.00 per year. At the time Hines was hired Debra Rasmusson was running the business.

2. Hines stated that in addition to handling the freight and aircraft schedules Debra Rasmusson also had him cash checks and take money to the bank. Hines further stated that shortly after he started working for Rasmark, Debra Rasmusson gave him a check for $4,000.00 and told him to cash the check and bring the money back to her. When Hines returned the money to Debra Rasmusson he asked if the money was a Christmas bonus for all of the employees. Rasmusson stated that it was not. Rasmusson further stated that the money was for a person who had given them a lot of business. Hines believes the money was going to Andy Gantkessy, the Ford Motor contact used by the Rasmusson's in El Paso, Texas. On another occasion Debra Rasmusson gave Hines a check to cash. In the ledger Rasmusson wrote the notation "Chris's Commission". When Hines questioned Rasmusson about the check, she stated that the money was not for Hines. Rasmusson went on to state that she owed Andy some money, but could not put his name on the check. Hines was told to drop the money off to Andy Gantkessy after cashing the check, however Debra later changed her mind and had Hines bring the money back to her. Debra told Hines that if he delivered the money Gantkessy, then Gantkessyas aware of the payments. Hines stated that when he took bills or invoices for the Ford account he was told not to give the paper work to anyone other than Gantkessy. Hines further stated that Gantkessy and Rasmark were billing Ford for flights that did not occur.

3. Hines also made several house payments for Debra. Hines stated that Debra would give him cash or a check and an envelope that was already addressed and stamped. Debra instructed Hines convert the check or cash to a cashier's check. The cashiers check was made payable to Joe Seaverns (Hines was not sure of the first name, however he stated that he knew he person was the owner of Dove Motors in El Paso, Texas) and a mortgage company. Hines would then put the check in the envelope provided by Debra and mail the cashiers check.

4. Hines was given an overdraft notice from the First Bank of Avon, Colorado, account number 32-1044. The account is in the name of Mark and Debbie Rasmusson, 6825 Convair, El Paso International Airport, El Paso, Texas.

5. Hines stated that Rasmark flew for the Mexican Federal Judicial Police on four or five occasions. Hines heard Debra and Blanca Avelar talking to one of the officers about the flight and cost. The flight was going to be a drug raid and was paid for in cash, always $20.00 bills. Hines stated that on one of the trips Debra received $2,500.00 and on another she received $4,500.00. On one of the flights Debra told Hines that she owed Andy Gantkessy money because he allowed them to hold some of Fords freight for several hours in order to fly the Mexican Police.

6. On one occasion a Mexican male, accompanied by a woman and children hired Rasmark to fly them to the Caiman Islands. Debra and the man went into her office, closed and locked the door. The man paid Debra in cash, approximately $13-14,000.00. Debra came out of the office after the man left and showed Hines the money. Hines told Debra that it was not a very good way for the man to pay if it was a business trip, because he would have no records. Debra told Hines not to worry about the money it was none of his concern.

7. Hines stated that on one occasion he met a very well dressed Mexican male that was supposed to be the owner of a Lear jet being used by Rasmark, the tail number was 7GP. Hines stated that the man always carried a lot of cash and would flash the money around the hanger.

8. Hines stated that a Snap-On-Tool truck would often come to Rasmark Jet. The truck was driven by a man Hines only knew as Felix. Hines stated that Debra would go out to the truck for quite some time. On one occasion the mechanic's assistant, Julio, made the statement "Debra is buying her dope from him." Hines stated that he never saw Debra taking any drugs, however some of her actions and the way she looked indicated that she was using drugs.

9. Hines stated J. J. Armes hired Rasmark for three different flights, however they were all business related.

10. Hines stated that Debra kept a metal file cabinet in her office, of which the bottom drawer was off limits to all personal. On one occasion Hines looked in the drawer and found several files labeled DEA, Customs and pilots.

11. Hines stated that Debra Rasmusson often bragged about the property that she an mark owned in Vail, Colorado, Cabo San Lucis, Mexico, several boats, motorcycles, jet skis and other items of property as well as belongings.

12. Hines stated that there were often FAA violations that were covered up by Debra and Mark. Hines was told by an unconfirmed source the pilots were paid $100.00 per FAA violation. Debra was in charge of the FAA drug testing for Rasmark Jet. On several occasions Debra or Mark requested Hines to act as the copilot in one of the jets. Hines stated that he declined, however one of the mechanics or loaders would go.

13. Just prior to leaving Rasmark Jet, Hines purchased a computer from the company. Before he was allowed to take the computer, Debra instructed Mark to delete all of the files. Debra told Mark they did not want Hines to see the files. Hines stated that Debra's password was "Cat", Hines was not sure of the spelling.

[End of Excerpts]

EXCERPTS FROM USCS REPORT NO. 109

REQUESTED BY: BRAZELL, BRUCE M

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UNITED STATES CUSTOMS SERVICE
REPORT OF INVESTIGATION

1. TECS ACCESS
   CODE [redacted]

2. PAGE 1

3. CASE NUMBER [redacted]

4. TITLE: [redacted]

5. CASE STATUS: INTERIM RPT

6. REPORT DATE
   052193

7. DATE ASSIGNED
   082890

8. CLASS [redacted]

9. PROGRAM CODE [redacted]

10. REPORT NO.
    109

11. RELATED CASE NUMBERS: [blank]

12. COLLATERAL REG: [blank]

13. TYPE OF REPORT: INVESTIGATIVE FINDINGS

TOPIC: TRASH FROM 11157 LEO COLLINS

14. SYNOPSIS:

On Monday, May 3, 1993 El Paso County Sheriffs Detective Jerry Keith obtained the residential trash from 11157 Leo Collins, El Paso, Texas. The following report details items found in the trash and surveillance conducted by Detective Keith on May 3. 1993.

15. DISTRIBUTION:
SACEP RIBIH HQDY HQFI

16. SIGNATURE: [blank]
SCHROEDER FRED SENIOR
SPEC AGENT

17. APPROVED: [blank]
WILCZEWSKI MICHAEL J
OE GRP SUPERVISOR

18. ORIGIN OFFICE: EP

19. TELEPHONE: 915 540 5700
EL PASO - SAC

20. TYPIST: SCHROEDER

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Page 2 --CONTINUATION

On Monday, May 3, 1993 El Paso County Sheriffs Detective Jerry Keith obtained the residential trash from 11157 Leo Collins, El Paso, Texas. While in the process of getting the trash Detective Keith observed Deborah RASMUSSON and two other females arrive at the residence. RASMUSSON was driving the red Mercdies.(sic) Detective Keith found the following items in the trash.

(1) There was a lot of male clothing thrown away.

(2) Several sets of keys.

(3) A plastic bottle with the hollow, plastic part of an ink pin stuck in the middle. The top of the bottle was covered with aluminum foil and small holes were punched in the foil. SA Schroeder conducted a chemical field test of the residue on the foil. SA Schroeder received a positive reaction for cocaine.

(4). A silver spoon with black residue in the bowl of the spoon. SA Schroeder conducted a chemical field test of the residue in the bowl of the spoon and received a positive reaction for heroin.

(5) A broken glass bottle.

(6) A newspaper article on Rasmark Jet Charter Inc., which gives information on Deborah and Mark RASMUSSON as well as the business.

At 12:00 PM on May 3, 191939 Detective Keith established surveillance on the Rasmark Jet Charter Office. Detective Keith observed a white colored pickup, Texas license CB-1779 depart the business. The vehicle is registered to Gildardo ROSALES, 10245 Whitetail, El Paso, Texas. . . .[redacted]

[End of Excerpts]

EXCERPTS FROM USCS REPORT NO. 118

REQUESTED BY: BRAZELL, BRUCE M

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DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE
REP0RT 0F INVESTIGATI0N

1. TECS ACCESS CODE [redacted]

2. PAGE 1

3. CASE NUMBER [redacted]

4. TITLE: [redacted]

5. CASE STATUS: INTERIM RPT

6. REPORT DATE
061493

7. DATE ASSIGNED
0821390

8. CLASS [redacted]

9. PROGRAM CODE [redacted]

10. REPORT NO.
118

11. RELATED CASE NUMBERS: [blank]

12. COLLATERAL REQ: [blank]

13. TYPE OF REPORT: MEMO OF INTERVIEW

TOPIC: INTERVIEW OF GANTKESSY

14. SYNOPSIS:

On June 2 and 3,, 1993, agents from United States Customs, the Federal Bureau of Investigation and the El Paso Police Department interviewed Andrew GANTKESSY about his involvement with Mark and Debra RASMUSSON and their business, RASMARK Jet Charter. GANTKESSY is an employee of Ford Motor company stationed in El Paso, Texas. For several years RASMARK Jet charter was the primary carrier for Ford Motor Company in the El Paso area.

15. DISTRIBUTION:
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16. SIGNATURE: [blank]
SCHROEDER FRED
SENIOR SPEC AGENT

17. APPROVED: [blank]
WILCZEWSKI MICHAEL J
OE GRP SUPERVISOR

18. ORIGIN OFFICE: EP

19. TELEPHONE: 915 540 5700
EL PASO - SAC

20. TYPIST: SCHROEDER

[Paragraph numbers added to text]

1. On June 2, 1993, United States Customs Special Agents

Lawrence Frost, Fred Schroeder, Larry Brown, Federal Bureau of Investigation Special Agent Joseph Acosta and El Paso Police Department Detective James Holland contacted Andrew Gantkessy at 15 Leigh Fisher Drive, El Paso, Texas. GANTKESSY is an employee of Favesa (a Mexican subsidiary of Ford Motor Company). GANTKESSY agreed to talk to Agents and was interviewed for a short time about his knowledge and involvement with Debra and Mark RASMUSSON.

2. GANTKESSY stated that he had received money from Debra and
Mark RASMUSSON, however he did not think the money was a pay off. GANTKESSY was told by Debra RASMUSSON that she was giving his the money because she liked him. GANTKESSY further stated that he had gone an several free trips with the RASMUSSONS.

3. SA Schroeder made arrangements to have GANTKESSY come to the Office of Enforcement for a more detailed interview on June 3, 1993.

4. On June 3, 19,93, SA Schroeder and Joseph Acosta again interviewed GANTKESSY. GANTKESSY stated that he had been introduced to Debra and Mark RASMUSSON approximately 6 to 7 years ago by a former supervisor of the Ford Motor Company, Sal Pianello. GANTKESSY stated that Ford Motor Company was looking for a local company to move freight. RASMARK, according to GANTKESSY, had the cheapest rates available at the time and were designated as the primary company by Ford Motor. GANTKESSY stated that Ford stopped using RASMARK after some trouble between Debra RASMUSSON and a supervisor at Ford, Joe Sudomire. GANTKESSY stated that Ford is now using Active Areal [sic] for all freight movements in the El Paso area. GANTKESSY stated that he had taken money from Debra RASMUSSON, however he did not think it was a bribe or payoff. GANTKESSY further stated that Debra RASMUSSON had offered his $5,000.00 per charter that he referred to RASMARK, however GANTKESSY refused the offer, stating that he did not make that kind of money and it would look suspicious. Debra

RASMUSSON went on to tell GANTKESSY that she had given an employee of GM, GANTKESSY was not sure about the company, over $100,000.00 for charter work given to RASMARK. GANTKESSY stated that one week later Debra and Mark RASMUSSON took his to Las Vegas with them. GANTKESSY stated that on this trip Debra RASMUSSON gave his 500.00 in cash and also money to play the slot machines. The RASMUSSON's paid

for all of the expenses involved in the trip. GANTKESSY stated that he accompanied the RASMUSSON's on a total of four trips to Las Vegas, one trip to the Supper Bowel and two other football games in California. Debra RASMUSSON told GANTKESSY that if anyone ever questioned him about the trips to tell them he had paid for the charter and she would falsify invoices to cover the trips. Debra RASMUSSON also told his not to talk to anyone with out an attorney.

5. GANTKESSY stated that he received money on several occasions from Debra RASMUSSON, other than on the trips. GANTKESSY stated that Debra RASMUSSON gave him different amounts anywhere from $50.00 to $3,500.00 in cash. GANTKESSY stated that on one of the trips to Las Vegas Mark RASMUSSON gave him $1,200-1,500.00, stating that it was from Debra RASMUSSON. GANTKESSY was not sure however what the total amount that he received was.

6. GANTKESSY stated that on two occasions Debra RASMUSSON gave him marijuana. The first time was just prior to the first trip to Las Vegas. On the second occasion Debra RASMUSSON gave him an envelope containing money and one cigarette of marijuana.

7. GANTKESSY stated that Debra RASMUSSON also offered him a percentage of a company she was starting called "NEXT FLIGHT". Debra RASMUSSON stated that the company would be under David CHAVES's [sic] name in order to qualify for minority status. GANTKESSY stated that he again refused the offer.

8. GANTKESSY also stated that Debra RASMUSSON made the statement that Mark RASMUSSON had threatened to kill her upon his return from the Cayman Islands. . . ."

[End of Excerpts]

EXCERPTS FROM USCS REPORT NO. 062

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REPORT OF INVESTIGATION

1. TECS ACCESS
   CODE [redacted]

2. PAGE 1

3. CASE NUMBER [redacted]

4. TITLE: [redacted]

5. CASE STATUS: INTERIM RPT

6. REPORT DATE
   032293

7. DATE ASSIGNED
   082890

8. CLASS [redacted]

9. PROGRAM CODE [redacted]

10. REPORT NO.
    062

11. RELATED CASE NUMBERS: [blank]

12. COLLATERAL REG: [blank]

13. TYPE OF REPORT: MEMO OF INTERVIEW

TOPIC: INTERVIEW OF POLICE OFFICER GONGAWARE

14. SYNOPSIS: On March 1, 1993, El Paso Police Detective James Holland interviewed El Paso Police Officer Clifford Gongaware. Officer Gongaware is assigned to the El Paso International Airport and observed activity in the area of RASMARK Jet charter.

15. DISTRIBUTION:
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16. SIGNATURE: [blank]
SCHROEDER FRED SENIOR
SPEC AGENT

17. APPROVED: [blank]
WILCZEWSKI MICHAEL J
OE GRP SUPERVISOR

18. ORIGIN OFFICE: EP
EL PASO - SAC

19. TELEPHONE: 915 540 5700

20. TYPIST: SCHROEDER

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[Paragraph numbers added to text]

DETAILS OF INTERVIEW:

1. On March 1, 1993, Officer Clifford Gongaware provided the following statement to El Paso Police Detective James Holland in regards to activities around RASMARK Jet Charter:

2. On July 13, 1992 Officer Gongaware was working the 2300 to 0700 hrs. shift at the El Paso International Airport. Officer Gongaware stated that at I:25 AM he was sent to Sate 62 (T-hangar area) because a vehicle was blocking the gate. When he arrived at the gate Officer Gongaware stated that he found a large yellow truck with Chihuahua plates stopped at the gate. Officer Gongaware further stated that the truck was occupied by Sergio Roman (driver), DOB:03-10-61 and Adrian M. Varela DOB:10-7-64, 5'9" tall 190 ibs. SSN: 457-31-9893 Airport ID #CML92-01539 residence: 813 Santa Barbara, El Paso, Texas. The two men told Officer Gongaware they needed in the gate to deliver some seat belts to RASMARK Air. Officer Gongaware stated that while he was checking on the two men, a vehicle arrived from inside of the airport gate. Officer Gongaware stated that the vehicle had come from the area of RASMARK Air and contained two white males. Officer Gongaware stated that a blond male exited the vehicle and verified the truck drivers story. The blond male stated he was from RASMARK Air. It was further explained to Officer Gongaware that the seat belts were for Ford Motor Company and needed to be flown immediately to Detroit. Officer Gongaware stated that he was shown paper work on the seat belts and being satisfied at this point he allowed the truck to enter.

3. Officer Gongaware stated that he felt further investigation was needed and drove near some hangars with his lights out and surveilled the Rasmark building. He watched the loading of a Lear Jet and noticed a male subject stationed away from the plane, facing north towards the airport and another male positioned to face

south towards Boeing St.

4. Officer Gongaware stated that he took no actions but later reported the matter to Lt. Dave Hamrick his Division Commander. Lt. Hamrick advised his the business was under investigation and to stay clear of the area. The officer did note the incident with the truck at the gate, on his log sheet and a copy has been obtained.

[End of Excerpts]

EXCERPTS FROM USCS REPORT NO. 061

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REPORT OF INVESTIGATION

1. TECS ACCESS
   CODE [redacted]

2. PAGE 1

3. CASE NUMBER [redacted]

4. TITLE: [redacted]

5. CASE STATUS: INTERIM RPT

6. REPORT DATE
   032293

7. DATE ASSIGNED
   082890

8. CLASS [redacted]

9. PROGRAM CODE [redacted]

10. REPORT NO.
    061

11. RELATED CASE NUMBERS: [blank]

12. COLLATERAL REG: [blank]

13. TYPE OF REPORT: MEMO OF INTERVIEW

TOPIC: INTERVIEW OF POLICE OFFICER DEANGELO

14. SYNOPSIS: On March 1, 1993 El Paso Police Detective James Holland interviewed El Paso Police Officer Andrew DeAngelo. Officer DeAngelo is assigned to the Airport Division of the El Paso Police Department. Officer DeAngelo provided information about activities he witnessed around the RASMARK Jet charter hanger and building.

15. DISTRIBUTION:
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16. SIGNATURE: [blank]
SCHROEDER FRED SENIOR
SPEC AGENT

17. APPROVED: [blank]
WILCZEWSKI MICHAEL J
OE GRP SUPERVISOR

18. ORIGIN OFFICE: EP
EL PASO - SAC

19. TELEPHONE: 915 540 5700

20. TYPIST: SCHROEDER

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SERVICE TOGETHER WITH A COPY OF THE DOCUMENT.

DETAILS OF INTERVIEW:

1. On March 1, 1993, Officer DeAngelo provided the following statement to Detective Holland:

2. Officer DeAngelo stated that about 6 months ago (A check of Officer DeAngelo's log sheets indicate the date to be July 24, 1992. This would be approximately 2-weeks after the incident described by Officer Gongawaro.), he was working the 2300 to 0700 shift at the El Paso International Airport. Officer DeAngelo stated that he stopped his patrol car by the airport perimeter fence at about 3:00 AM. Officer DeAngelo was watching a person walking around in the parking lot of the Marriott Hotel, 1600 Airway Boulevard, El Paso, Texas. Officer DeAngelo stated that he noticed several people apparently off loading one of the Lear Jets at RASMARK Jet Charter. Officer DeAngelo stated that he then noticed that there was a guard armed with a rifle, posted to watch North towards the main airport area and another guard with a rifle posted to watch south towards Boeing St. Officer DeAngelo stated that he watched the activity for about 15 minutes. Officer DeAngelo stated that he then observed all of the persons go into the RASMARK building. DeAngelo then went and reported the matter to Officer Clifford Gongaware. Officer Gongaware advised him to stay clear of the business as it is under investigation.

3. Officer DeAngelo further stated that two weeks ago, while working the 2306 to 0700 shift he noticed a white dual wheel pickup attempting to leave the T-hanger gate area at approximately 2330 AM. (A check of Officer DeAngelo's log sheets indicate the date of this occurrence to have been February 13, 1993.) Officer DeAngelo stated that the persons appeared to being having some difficulty with the gate, however they made no attempt to contact him so he continued his patrol. A short time later while patrolling the T-hangar area, Officer DeAngelo stated that he observed the white

pickup drive from the gate back to the area of Gene's Air business adjacent to Rasmark, one of the occupants got out of the truck and put a box inside of a plane sitting on the ramp. The two occupants of the truck then went to find Officer DeAngelo to assist then in getting out the gate. Officer DeAngelo identified both subjects and checked the vehicle. Officer DeAngelo stated that he noted the information on his

log sheet and a copy was provided to Detective Holland.

4. Officer DeAngelo stated that he attempted to locate the box after the two persons had departed the area however he was unable to locate it.

[End of Excerpts]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

MARK B. RASMUSSON, ET AL.,	)	
	)	
Plaintiffs,	)	
	)	
V.	)	CIVIL ACTION
	)	NO. EP- 95-CA-475-F
LAWRENCE E. FROST, ET AL.,	)	
	)	
Defendants.	)	

DECLARATION OF ROBERT MARTINEZ

1. 1, Robert Martinez, Internal Revenue Service special Agent, was assigned to a Task Force in which the Drug Enforcement Administration (DEA) was the lead agency in June 1990. My duties included investigating violations of Federal Income Tax Laws and related offenses.

2. 1 have had no contact, professionally or otherwise, with any of the Plaintiffs in this case.

3. In 1991, 1 testified in the trial of Jesus Flores. This was my only involvement regarding anything to do with any of the allegations in Plaintiffs' Petition.

4. 1 was neither involved in nor do I have any personal knowledge of the remaining allegations contained in the Plaintiffs' Second Amended Petition.

5. I declare under penalty of perjury that the foregoing statements are true and correct. Executed on this 31st day of July 1996.

/s/ ROBERT MARTINEZ
Special Agent
Internal Revenue Service

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

MARK B. RASMUSSON RASMARK JET CHARTER, INC. DEBORAH L. RASMUSSON, AND ANDREW A. GANTKESSY PLAINTIFFS, VS. LAWRENCE E. FROST, et al., Defendants.	)	CIVIL ACTION: EP-95-CA-475-F JURY DEMAND

DECLARATION OF JAMES F. TIGHE

I, James F. Tighe, in lieu of an afffidavit as permitted by 28 U.S.C. § 1746, do hereby declare from personal knowledge as follows:

1. I am a Special Agent, GS-1811 Criminal Investigator, assigned to the Department of the Treasury, Office of Inspector General (OIG), 5850 San Felipe, Suite 300, Houston, Texas, 77057. I have held this position for approximately six (6) years. My duties as a Special Agent primarly [sic] involve performing in an investigatory capacity.

2. The OIG is a law enforcement component of the Department o f the Treasury as established under the Inspector General Act of 1978, as amended, 5 U.S.C App. 3. The OIG is responsible for compiling records and information pertaining to investigations which involve allegations concerning violations of criminal and civil law.

3. I have never been employed in any capacity by the Department of the Treasury, U.S. Customs Service.

4. Subsequent to the OIG's initial receipt of allegations concerning Michael Lappe, in October 1991, 1 was officially assigned to conduct an investigation of misconduct by Michael Lappe, Special Agent in Charge, Office of Enforcement, U.S. Customs Service, El Paso, Texas. The allegations consisted of potential violations of civil and criminal law. I completely investigated each of the allegations.

5. Based on testimony of multiple witnesses and other documentary evidence acquired during the investigation, I determined that none of the allegations could be substantiated. Therefore, no civil or criminal referral was initiated by the OIG.

6. On November 22, 1993, a Report of Investigation (ROI) was completed and forwarded to OIG Headquarters for subsequent referral to and review by the U.S. Customs Service. The U.S Customs Service has the authority to make conclusions and take whatever action it deems appropriate and necessary concerning its employees. OIG records indicate that the ROI was reviewed by the U.S. Customs Service on March 24, 1994. By memorandum dated April 26, 1994, the U.S. Customs Service advised the OIG that a final decision was made that no administrative action was warranted based on the ROI.

7. 1 have never met, nor have I ever had any type of communications with Carol Hallett, former Commissioner; George Weisse, Commissioner; and ; John Hensley, Assistant Commissioner for Enforcement; U.S. Customs Service. Neither Hallett, Weisse or Hensley were ever involved in any way or manner with the conduct of my investigation. I have no knowledge of any cover-up allegedly orchestrated by Hallett, Weisse and Hensley.

8. The information presented in my ROI is a true and accurate representation of the testimony and/or documents acquired from the witnesses contacted during the investigation. I have no evidence now, nor did I ever perceive. that any of the witnesses in this investigation, including Lappe, provided me with inaccurate or false information. At

no time during this investigation did anyone ever attempt to influence or sway me to report witness testimony in an inaccurate manner.

9. Donald Reay, Assistant Special Agent in Charge, Office of Enforcement, U.S. Customs Service, El Paso, Texas, was not a subject of this investigation.

I declare under penalty of perjury that the foregoing is true and correct. Executed on June 28, 1996.

/s/ James F. Tighe
Special Agent
Office of Inspector General
U.S. Department of the Treasury

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

MARK B. RASMUSSON, ET AL.,	)	
	)	
Plaintiffs,	)	
	)	
V.	)	CIVIL ACTION NO.
	)	EP-95-CA-475-F
	)	
LAWRENCE E. FROST, ET AL.,	)	
	)	
Defendants.	)	

DECLARATION OF SOCORRO G. SIMMONS

1. I Socorro G. Simmons, Special Agent, Immigration and Naturalization Service ("INS"), was assigned to the Drug Enforcement Administration ("DEA"), El Paso District, El Paso, Texas, from March 1990 to December 1992, to work on drug related cases.

2. Between 1990 and 1992, I worked on several cases, including an investigation of the Jesus Flores' drug organization. Mr. Mark Rasmusson and his business, Rasmark Jet Charter, Inc., were investigated concerning his association with the Jesus Flores' organization.

3. The Jesus Flores came was designated an Organized Crime Drug Enforcement Task Force (OCDETF) case. The DEA was the lead Federal Agency, and the DEA case agents were Tom Lenox and Steven Perkins.

4. The DEA obtained wire tap authority of telephones believed to be used by the Flores' organization. Several INS agents participated as telephone monitors or on surveillance during the wire tap. Since my assignment to DEA was long term, I was the lead INS Agent. Rasmark

Jet Charter was mentioned several times during the wire tap.

5. During the investigation of Jesus Flores, information was received by informants alleging that Mark Rasmusson was part of the Flores organization. To the beat of my recollection, I accompanied Agent Lenox on several interviews including interviews with informants.

6. I also accompanied Agent Perkins when he interviewed Rasmark Aviation pilot Jerry Burnett.

7. I assisted in the trial preparation and Government witness coordination in U.S. v. Jesus Flores, et al., EP-90-CR-258-H. My involvement in any investigation of Rasmark Jet Charter, Inc. and Mark Rasmusson ended at the close of the Flores trial in June 1991.

8. I have never met any of the Plaintiffs in this case.

9. I was neither Involved in nor do I have any personal knowledge of the remaining allegations contained in the Plaintiffs' Second Amended Petition.

10. I swear under penalty of perjury that the foregoing statements are true and correct.

7/30/96
DATE

/s/ Socorro G. Simmons
Supervisory Special Agent
Immigration and
Naturalization Service

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS EL PASO DIVISION

MARK B. RASMUSSON, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. EP-95-CA-475-F
	)	
STEVEN ERIC PERKINS, et al.,	)	
	)	
Defendants.	)	

DECLARATION OF ELIAS P. CHAVEZ

I, ELIAS P. CHAVEZ, declare and say:

1. I am a GS-1811 Criminal Investigator (or "Special Agent") of the United States Department of Justice, Drug Enforcement Administration (DEA). I served as a DEA S/A for 17 years, left the agency for a brief period of time, and then returned in 1990. When I first returned to DEA, I initially served as an intelligence analyst. I have since become a Special Agent again, and I am currently assigned to DEA's Dallas, Texas, Field Division. At all times described in the complaint, I was serving as an intelligence analyst assigned to DEA's El Paso District Office.

2. While I was in El Paso, I participated in an Organized Crime Drug Enforcement Task Force (OCDETF) investigation of a large drug trafficking organization operated by an individual named Jesus Flores. My role in the case was to assist in interviews of a number of individuals who either worked with Jesus Flores in the drug trafficking organization or else had evidence of activities of the Flores organization. These interviews took place in 1990. I did not participate in any investigation of any of the plaintiffs in this case subsequent to these interviews.

3. I deny plaintiffs' allegations that I in any way fabricated evidence, participated in the fabrication of evidence, or was aware of the fabrication of any evidence. The forms DEA-6, Reports of Investigation, of the interviews in which I participated were written by the agent participating in the interviews rather than by me. However, I reviewed these reports after they were written, and they are an accurate reflection of the information obtained during the interviews in which I participated.

4 I declare under penalty of perjury that the foregoing statements are true and correct.

7-16-96
DATE

/s/ Elias P. Chavez
Special Agent
Drug Enforcement Administration

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

MARK B. RASMUSSON, ET AL.,	)	
	)	
Plaintiffs,	)	
	)	
V.	)	CIVIL ACTION NO.
	)	EP-95-CA-475-F
	)	
LAWRENCE E. FROST, EL AL.,	)	
	)	
Defendants.	)	

DECLARATION OF LARRY K. BROWN

1. I, Larry K. Brown, am a Special Agent (SA) with the U.S. Customs Service, currently assigned to the Resident Agent in Charge (RAC) in Blains, Washington. This has been my assignment since October 1988.

2. In May 1993, I was assigned to a forty-five (45) day detail at the U.S. Customs Service Office, El Paso, Texas. The detail began on May 17, 1993 (a travel day) and ended on June 30, 1993 (a travel day). Upon my arrival in El Paso, Texas, I met with the Group Supervisor, Michael Wilczewski who advised me that I would be assigned to assist in an ongoing OCDEF investigation. Special Agent Larry Frost was identified as the case agent. I read some of the Reports of Investigation to familiarize myself with the investigation. The investigation had been underway for some time prior to my arrival.

3. Due to my limited time on the detail, my participation was limited to assisting on surveillance, and one garbage pick up. Due to my temporary duty (TDY) status, I also assisted as needed on unrelated investigative surveillance while working at the El Paso U.S. Customs Office.

4. During the course of the investigation, I was present at the interview of Andrew Gantkessy at his place of employment. I did not take notes at this interview. I recall that this meeting was cordial and brief. Mr. Gantkessy appeared nervous, but remained calm during the meeting. As I recall, the meeting was conducted in a small conference room away from other employees. I recall Mr. Gantkessy stating that he had received money from Mark and Debbie Rasmusson, but Mr. Gantkessy did not consider that the payments were any kind of payoff. I recall Mr. Gantkessy saying he had flown on free trips as a guest of the Rasmussons to football games. Special Agent Frost made arrangements to meet with Mr. Gantkessy the following day at the Customs Office.

5. I was not present at the meeting on the next day. This was my first and only contact with Mr. Gantkessy. I do not recall talking to Mr. Gantkessy other than identifying myself as a Special Agent with the U.S. Customs. I have no personal knowledge of the letter sent by SAC Michael Lappe to Ford Motor Company.

6. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

July 29, 1996
Date

/s/ Larry K. Brown
Special Agent
U.S. Customs Service

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

MARK B. RASMUSSON, ET AL.,	)	
	)	
Plaintiffs,	)	
	)	
V.	)	CIVIL ACTION NO
	)	EP-95-CA-475-F
	)	
LAWRENCE E. FROST, ET AL.,	)	
	)	
Defendants.	)	

DECLARATION OF WALTER J. KING

1. I, Walter J. King, am a Special Agent, of the United States Customs Service, El Paso, Texas, where I have served since April 1987.

2. I am currently assigned to the Financial Investigations Group, which is located at the Office of the Special Agent in Charge, 9400 Viscount, El Paso, Texas.

3. The Financial Task Force is located off-site. I have never been a member of the Financial Task Force. However, the Financial Investigations Group located at the Office of the Special Agent in Charge, 9400 Viscount, El Paso, Texas, provides manpower support to the Task Force when necessary.

4. September 8th through the 15th, 1993, I was assigned to assist the Financial Task Force in conducting surveillances at various locations.

5. I also assisted the Financial Task Force in conducting surveillances intermittently, to the best of my recollection, during calendar years 1992-1993.

6. On or about November 22, 1993, I was assigned to assist the Financial Task Force in the execution of a Search Warrant at 6805 Boeing Drive, El Paso, Texas. When I arrived at the location, I was instructed to return to the office located at 9400 Viscount, El Paso, Texas, and obtain a camera and film. I returned to the address located at 6805 Boeing Drive, and commenced to photograph evidence. However, the camera lens malfunctioned and I was unable to continue to photograph the evidence. I remained at the site and assisted in the execution of the Search Warrant, which consisted solely of providing security of the evidence to be inventoried.

7. I was not present at the execution of the Search Warrant at the Rasmusson residence located at 11157 Leo Collins, El Paso, Texas, and I have no personal knowledge of that operation.

8. Because I was never a member of the Financial Task Force, I did not have access to or contact with any of the informants referenced in Plaintiffs' Petition.

9. I was neither involved in nor do I have any personal knowledge of the remaining allegations contained in the Plaintiffs' Second Amended Petition.

10. I swear under penalty of perjury that the foregoing statements are true and correct.

July 30, 1996
Date

/s/ Walter J. King
Special Agent
U.S. Customs Service

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

MARK B. RASMUSSON, ET AL.,	)	
	)	
Plaintiffs,	)	
	)	
V.	)	CIVIL ACTION NO.
	)	EP-95-CA-475-F
	)	
LAWRENCE E. FROST, EL AL.,	)	
	)	
Defendants.	)	

DECLARATION OF RAFAEL AGUIRRE

1. I, Rafael Aguirre, am a Criminal Investigator (or "Special Agent") of the United Stated Department of Justice, Drug Enforcement Administration ("DEA"). I have held this position since September 1, 1975.

2. I am currently assigned to the Drug Enforcement Administration's Fort Lauderdale, Florida, District Office as a Group Supervisor. I have been in Fort Lauderdale since March 1995. Previously, I was assigned to the DEA's, El Paso, Texas, District Office. I was assigned to that Office from April 1990 until June or July 1992. At all times relevant to this complaint, I was the Group Supervisor of an Enforcement Group at the El Paso District Office.

3. When I arrived in the Group in El Paso, a large investigation was underway into a drug trafficking organization being run by an individual named Jesus Flores. The investigation had revealed that the organization was trafficking in large quantities of marijuana and cocaine. Special Agents Steven Perkins and Thomas Lenox were assigned as case agents.

4. As Group Supervisor, I did not personally participate in any substantial way in the investigation. Under DEA policy, all reports of investigation written by Special Agents are reviewed and signed by a Group Supervisor. I reviewed and signed the reports generated during the investigation of the Flores organization while I served as Group Supervisor. I have no reason to believe that any of the evidence contained in the reports is false.

5. After Jesus Flores was convicted, I no longer participated in any investigation of Flores or any of the Plaintiffs in this case.

6. I was neither involved in nor do I have any personal knowledge of the remaining allegations contained in the Plaintiffs' Second Amended Petition.

7. I declare under penalty of perjury that the foregoing is true and correct."

August 1, 1996
DATE

/s/ Rafael Aguirre
Group Supervisor
Drug Enforcement
Administration

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

MARK B. RASMUSSON, ET AL.,	)	
	)	
Plaintiffs,	)	
	)	
V.	)	CIVIL ACTION NO.
	)	EP-95-CA-475-F
	)	
LAWRENCE E. FROST, EL AL.,	)	
	)	
Defendants.	)	

DECLARATION OF JOHN E. HENSLEY

John E. Hensley declares and states as follows:

1. I am the Special Agent in Charge of the Los Angeles Field Division, Office of Investigations, U.S. Customs Service, U.S. Department of the Treasury. I have served in that position since February 1996. I served in the same position in the Dallas Field Division from April 1994 until February 1996.

2. I was the Assistant Commissioner of the Office of Enforcement, U.S. Customs Service, Department of the Treasury from February 1990 until April 1994.

3. As Assistant Commissioner, I oversaw the general operations of my Division, which included over 5,000 employees, 140 Domestic offices, 25 Foreign offices and an operating budget of 500 million dollars.

4. As Assistant Commissioner, I did not directly oversee the day to day case management in the field offices. There are at least three levels of supervision at the field level and three levels at the Washington

Headquarters level between the working agents and the Assistant Commissioner.

5. I have read Plaintiffs' Second Amended Original Petition and as Assistant Commissioner, I was not aware of any cases relating to the Plaintiffs, and I have no personal knowledge of the facts of this case.

I declare under penalty of perjury that the foregoing statement is true and correct to the best of my of knowledge. Executed on the 11th of July, 1996 in Los Angeles, California

/s/ John E. Hensley

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

MARK B. RASMUSSON, ET AL.,	)	
	)	
Plaintiffs,	)	
	)	
V.	)	CIVIL ACTION NO.
	)	EP-95-CA-475-F
	)	
LAWRENCE E. FROST, EL AL.,	)	
	)	
Defendants.	)	

DECLARATION OF GEORGE J. WEISE

"I, George J. Weise, declare as follows:

1. My name is George J. Weise. I am currently Commissioner of the United States Customs Service. I have served in this capacity from May 1993, at Customs Headquarters in Washington, D.C. In this capacity, I direct the employees of the Customs Service in carrying out Customs statutory mission.

2. I have read the complaint in this case and understand the specific allegations against me.

3. In general, the policy of the Customs Service is carried out by subordinates of the Commissioner and without specific knowledge by me. In particular, I have no personal knowledge of the facts of this case.

I swear under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

4/28/96 /s/ George J. Weise

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

MARK B. RASMUSSON, ET AL.,	)	
	)	
Plaintiffs,	)	
	)	
V.	)	CIVIL ACTION
	)	NO. EP-95-CA-475-F
	)	
LAWRENCE E. FROST, EL AL.,	)	
	)	
Defendants.	)	

DECLARATION OF CAROL HALLETT

"I, Carol Hallett, declare as follows:

1. My name is Carol Hallett. I was Commissioner of the United States Customs Service from November 1989 to January 1993. I served in this capacity at Customs Headquarters in Washington, D.C. In this capacity, I directed the employees of the Customs Service in carrying out Customs mission under law.

2. I have read the complaint in this case and understand the specific allegations against me.

3. In general, the policy of the Customs Service is carried out by subordinates of the Commissioner and without specific knowledge of the Commissioner and without specific knowledge of the Commissioner. In particular, I have no personal knowledge of the facts of this case.

I swear under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

May 2, 1996
Date

/s/ Carol Hallett

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

MARK A. RASMUSSON,	§	
RASMARK JET CHARTER, INC.,	§	
	§	
PLAINTIFFS,	§	
	§	
v.	§	NO. EP-95-CA-475-DB
LAWRENCE E. FROST, ET AL	§	
	§	
DEFENDANTS	§	

AFFIDAVIT OF DEFENDANT IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

Defendant, Russ Leach, states under oath that:

1. I am a resident of the State of Texas, and I am employed as the Chief of Police, El Paso Police Department, El Paso, Texas.

2. I have personal knowledge of all facts set forth in this affidavit and I am competent to testify as a witness regarding such facts.

3. I was hired as Chief of Police for the El Paso Police Department, and assumed my first duties, on April 3, 1995. Before that time, I lived in Los Angeles, California, and was not a member of the El Paso Police Department.

4. Since April 3, 1995, during my tenure as Chief of Police, it has not been a policy or custom of the El Paso Police Department, or of the City of El Paso, individual police officers, or myself to deprive persons of their constitutional and statutory rights as citizens. At all times during my employment, and previous to my hiring, from information obtained by me, the actions of the individual officers of the El Paso Police Department in enforcing the laws of the State of Texas

and El Paso, Texas were performed within the scope and course of their duties and authorities, in good faith, and at no time violated clearly established statutory law and the constitutional rights of any person.

5. All activities of the El Paso Police Department, including investigations and surveillance, were, and are, undertaken as discretionary actions, in good faith, and done in the belief that they are lawful, valid and constitutionally permissible.

6. I have reviewed the plaintiffs' complaint in this action, and I know of no policy, procedure, custom, campaign, course of training, supervisory technique or any other activity by myself or the individual officers, or the police department as a whole, that was meant-to harass Mr. Rasmusson or his company, to interfere with their business relations, to invade their privacy, or to cause harm of any kind to them or any other persons.

7. I have not witnessed, nor received internal reports of, any improprieties in the police investigation of Mr. Rasmusson or any of his associates. I did not participate in the investigation, and I never issued orders to circumvent any departmental rules or established constitutional or statutory protections afforded Mr. Rasmusson, his company, or others.

8. There have been no training procedures or any other policies or customs formulated by the El Paso Police Department that were deliberately designed or implemented to be indifferent to the rights of any person.

/s/ RUSS LEACH
CHIEF OF POLICE
EL PASO POLICE DEPARTMENT

STATE OF TEXAS
COUNTY OF EL PASO

Subscribed and sworn to bef ore me on this 12th day of January, 1996.

/s/ NOTARY

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

MARK A. RASMUSSON, et al.,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	Cause No.
	§	EP-95-CA-475F
LAWRENCE E. FROST, et al.,	§	
	§	
Defendants.	§	

AFFIDAVIT OF LEO SAMANIEGO

1. My name is Leo Samaniego, I am over twenty-one years of age and competent to make this affidavit based on my personal knowledge, information, and belief. I have been served with a copy of the Complaint in the above entitled and numbered cause and this affidavit is given in connection with same.

2. I am currently the Sheriff of El Paso County and have held this elected office since 1985. As part of my efforts towards combating the growing drug trade invading El Paso County, I agreed to assign officers Jerry Keith and Neil Baker to a task force comprised of law enforcement officers from various agencies. The task force was organized and directed by federal law enforcement agencies and officers. No officer of the El Paso County Sheriffs Department had a supervisory role within this task force. This task force is separate and apart from the West Texas Multi-County Task Force.

3. I have been informed that some of the targets of the investigation included Mark Rasmusson and Rasmark Jet Charter, Inc. I have also been informed that Detectives Keith and Baker performed minor investigative duties such as surveillance and trash

pick-up at the El Paso Sanitation Department. I have further been informed that Detective Baker participated in the execution of a search warrant issued by a federal magistrate. These are duties which are within the scope and course of employment for Defendants Baker and Keith, they are a discretionary function and are consistent with the actions of a reasonable peace officer in similar circumstances.

4. I am not aware of either Detectives Keith or Baker engaging in any conspiracy to violate the rights of any individuals, including the Plaintiffs. Nor am I aware of any action taken by Detectives Keith or Baker which would violate either state or federal laws. Such actions are contrary to the policies and procedures of the El Paso County Sheriffs Department.

/s/ LEO SAMANIEGO
SHERIFF, EL PASO COUNTY

STATE OF TEXAS §
COUNTY OF EL PASO §

SUBSCRIBED AND SWORN TO before me on this the 17th day of June, 1996.

/s/ Bernadette Moreno
Notary Public in and for the
State of Texas

EXCERPTS FROM LEO SAMANIEGO'S ADMISSIONS

REQUEST FOR ADMISSION NO. I
Admit you are the highest ranking law enforcement officer employed by the County of El Paso.

ANSWER: Admit.

REQUEST FOR ADMISSION NO. 2.
Admit that Detective Jerry Keith was employed by the El Paso County Sheriff's Department and Mr, Keith is now retired.

ANSWER: Admit.

REQUEST FOR ADMISSION NO. 3.
Admit the Detective Neil Baker is employed by the El Paso County Sheriff's Department.

ANSWER: Admit.

REQUEST FOR ADMISSION NO, 4
Admit that you assigned Detective Jerry Keith and Detective Neil Baker to work in a federal tank force investigating Plaintiffs.

ANSWER: Admit that Detectives Keith and Baker were temporarily assigned to assist in a federal task force which included investigations of activities involving the Plaintiffs. Deny that I personally made the assignment.

REQUEST FOR ADMISSION NO. 5
Admit that no officer of the El Paso County Sheriff's Department had a supervisory role as to the activities of Detective Neil Baker and Detective Jerry Keith while they were assigned to the federal task force.

ANSWER: Admit that no officer of the El Paso County Sheriff's Department had a supervisory role within the federal task force. Deny that Detectives Baker and Keith were not supervised by members of the El Paso County Sheriff's Department at the time of their temporary assignment.

REQUEST FOR ADMISSION NO. 6

Admit that the Federal task force to which Detective Neil Baker and Detective Jerry Keith was assigned was not the West Texas Multi-County Task Force.

ANSWER: Admit

REQUEST FOR ADMISSION NO, 7

Admit that you have no personal knowledge that some of the targets of the investigation by the federal task force included Mark Rasmusson and Rasmak Jet Charter, Inc.

ANSWER: Admit

REQUEST FOR ADMISSION NO. 8

Admit that you have no personal knowledge that Detective Keith and Baker performed minor investigative duties such as surveillance and trash pick-up.

ANSWER: Admit

REQUEST FOR ADMISSION NO. 9

Admit that you have no personal knowledge that Detective Baker participated in the execution of a search warrant issued by a federal magistrate.

ANSWER: Admit

REQUEST FOR ADMISSION NO. 10

Admit that you are responsible for training of all deputies under your command including Neil Baker and Jerry Keith.

ANSWER: Admit that the training of all deputies within the El Paso County Sheriff's Department is my responsibility as Sheriff of El Paso County.

REQUEST OF ADMISSION NO. 11

Admit that you are the final policy maker as to the training and supervision of all deputies under your command including Neil Baker and Jerry Keith.

ANSWER: Admit

REQUEST FOR ADMISSION NO, 12

Admit that any El Paso County Sheriff's Department deputy who engaged in a conspiracy to violate the rights of any individuals, including Plaintiffs' or any deputy who engaged in conduct that violated state or federal law that such actions would be contrary to the policies and procedures of the El Paso County Sheriff's Department.

ANSWERS: Admit that it is a violation of the policies and procedures of the El Paso County Sheriff's Department to knowingly engage in any conspiracy to violate the rights of any individuals or to knowingly engage in any conduct which is violative of state or federal law. Deny that Plaintiff's rights have been violated by members of the El Paso County Sheriff's Department.

REQUEST FOR ADMISSION NO. 13

Admit that any deputy in your command including Neil Baker and Jerry Keith who engaged in a conspiracy to violate any individuals rights that such deputy is not acting within the scope of his or her discretionary authority.

ANSWER: Admit that any officer who knowingly engages in a conspiracy to violate any individuals rights is acting outside the scope of his or her discretionary authority. Deny that any such conspiracy exists.

REQUEST FOR ADMISSION NO. 14

Admit that any deputy in your command including Neil Baker and Jerry Keith who engaged in a conspiracy to violate any individual's rights that such action by any deputy is unreasonable and said deputy would not be acting within the scope of his or her discretionary authority.

OBJECTION: Defendants object to Plaintiffs' Request For Admission N' 14 in that it is repetitive of Request for Admission No. 13.

REQUEST FOR ADMISSION NO. 15

Admit that any deputy in your command including Neil Baker and Jerry Keith who engaged in acts that would violate either state or federal laws such acts by any deputy are unreasonable and said deputy would not be acting within the scope of his or her discretionary authority.

ANSWER: Deny.

REQUEST FOR ADMISSION NO. 16

Admit that you assigned Neil Baker and Jerry Keith to work in a DEA task force.

ANSWER: Deny.

[End of Excerpts]

EXCERPTS FROM POLICIES AND PROCEDURES EMPLOYEE'S MANUAL/HANDBOOK EL PASO COUNTY METRO NARCOTICS TASK FORCE FINANCIAL DISRUPTION UNIT

EL PASO COUNTY SHERIFF'S DEPARTMENT OVERVIEW Of UPPER MANAGEMENT

SHERIFF

CHIEF DEPUTY

Special Operation–Captain, Detention Bureau–Captain, Support Services Bureau–Captain, Criminal Investigations–Captain, and Administration Bureau–Lieutenant

EL PASO COUNTY SHERIFF'S DEPARTMENT SPECIAL OPERATIONS BUREAU

CAPTAIN----------} H.I.D.T.A Coordinator

Metro Narcotics
Task Force–Lieutenant
Sergeant
Chief Prosecutor
SERGEANT
[Eight Detective and
one k-9 Deputy Positions]
CHIEF PROSECUTOR
[Two Prosecutor Positions]

Financial Disruption Unit
(H.I.D.T.A.)–Lieutenant
Detective [six positions]
Local Area Network Tech
Criminal Analyst
Special Prosecutor

EL PASO COUNTY METRO NARCOTICS TASK FORCE

AND

EL PASO COUNTY FINANCIAL DISRUPTION UNIT

PARTICIPATING AGENCIES

1993 - 1994

EL PASO COUNTY SHERIFF'S DEPARTMENT
EL PASO POLICE DEPARTMENT
UNITED STATES BORDER PATROL
UNITED STATES CUSTOMS SERVICE
DRUG ENFORCEMENT ADMINISTRATION
FEDERAL BUREAU OF INVESTIGATION
TEXAS DEPARTMENT OF PUBLIC SAFETY
UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE
TEXAS NATIONAL GUARD
INTERNAL REVENUE SERVICE

EL PASO COUNTY METRO NARCOTICS TASK FORCE FINANCIAL DISRUPTION UNIT

INTRODUCTION

THE EL PASO METRO NARCOTICS TASK FORCE-FINANCIAL DISRUPTION UNIT IS A MULTI-AGENCY COOPERATIVE APPROACH OF DRUG ENFORCEMENT FOR THE COUNTY OF EL PASO AND THE CITIZENS WE SERVE. THESE STANDARD OPERATING PROCEDURES AND POLICIES ARE NOT INTENDED TO TAKE THE PLACE OF OR SUPERSEDE ANY RELATED POLICY AT AN EMPLOYEE'S HOME AGENCY. RATHER, THEY ARE DESIGNED TO PROTECT THE INTEGRITY AND EFFICIENT ADMINISTRATION OF THIS TASK FORCE. WHERE THERE IS A CONFLICT BETWEEN THE POLICIES OF THIS TASK FORCE AND THE PARTICIPATING AGENCY, THE MORE RESTRICTIVE POLICY WILL PREVAIL AND WILL BE ADHERED TO BY THE EMPLOYEE ASSIGNED TO THE TASK FORCE. FINAL DISCIPLINARY ACTION FOR ANY VIOLATION WILL BE THE RESPONSIBILITY OF THE HEAD OF THE EMPLOYEE'S AGENCY.

3.5 STANDARDS OF CONDUCT

I. AN INVESTIGATOR ASSIGNED TO THE TASK FORCE WHO FAILS TO ASSUME RESPONSIBILITIES OR EXERCISE DILIGENCE, PROPER DEMEANOR, INTELLIGENCE, AND INTEREST IN THE PURSUIT OF HIS DUTIES, OR WHO ACTS IN A MANNER TENDING TO BRING DISCREDIT UPON HIMSELF, THE TASK FORCE OR HIS/HER PARENT AGENCY MAY BE DEEMED UNACCEPTABLE AND UPON SUCH FINDING, THE PROJECT DIRECTOR MAY REQUEST THE RECALL OF THAT INVESTIGATOR TO HIS PARENT AGENCY.

II. ALL EMPLOYEES OF THE TASK FORCE ARE

EXPECTED TO COMPLY WITH ALL LAWFUL ORDERS BY THE SUPERVISORY PERSONNEL WITHIN THE TASK FORCE AND SHALL CONDUCT THEMSELVES IN A PROFESSIONAL MANNER WHEN DEALING WITH THE PUBLIC, AS WELL AS OTHER CITY, COUNTY, STATE, AND FEDERAL AGENCIES. ALL EMPLOYEES ARE FURTHER EXPECTED TO COOPERATE WITH EACH OTHER AND REPRESENTATIVES OF OTHER AGENCIES IN THE TASK FORCE.

III. EMPLOYEES SHALL NOT DIVULGE OR DISCUSS CONFIDENTIAL TASK FORCE BUSINESS TO ANYONE OUTSIDE THE TASK FORCE EXCEPT WHEN AUTHORIZED BY A SUPERVISOR. CONTENTS OF ANY RECORDS IN THE TASK FORCE FILES, SHALL BE SHOWN OR DIVULGED ONLY TO THOSE PERSONS AUTHORIZED OR UPON REVIEW AND APPROVAL OF THE SPECIAL PROSECUTORS AND/OR SUPERVISOR. EMPLOYEES SHALL NOT REMOVE ANY OFFICIAL TASK FORCE RECORDS OR DOCUMENTS FROM THE TASK FORCE OFFICE, EXCEPT AS AUTHORIZED THEIR SUPERVISOR.

IV. NO EMPLOYEE SHALL WITHHOLD OR DESTROY EVIDENCE OF ANY KIND AND ONLY THE EVIDENCE CUSTODIAN/PROPERTY OFFICER WILL DESTROY EVIDENCE UPON A COURT ORDER.

V. EVERY OFFICER IS EXPECTED TO COMPLY WITH THE USE OF FORCE POLICY OF HIS PARENT AGENCY.

VI. TASK FORCE OFFICER(S) WHO HAS IN CUSTODY ANY PERSON(S) UNDER ARREST OR DETENTION SHALL BE RESPONSIBLE FOR THE PROPER SAFEGUARDING OF SUCH PERSON(S) ADD THEIR PROPERTY AND ANY MONEY OR PROPERTY SEIZED SHALL BE TURNED INTO THE APPROPRIATE CUSTODIAN WITH A CHAIN OF EVIDENCE FORM AS SOON AS POSSIBLE.

VII. IT SHALL BE THE RESPONSIBILITY OF THE

EMPLOYEE TO KEEP THE TASK FORCE APPRAISED OF ANY CHANGES OF PERSONAL DATA SUCH AS HOME ADDRESS, TELEPHONE NUMBER, ETC. ANY CHANGES WILL BE FORWARD TO THE ADMINISTRATIVE ASSISTANT VIA A WRITTEN MEMORANDUM.

VIII. AN EMPLOYEE OF THE TASK FORCE SHALL NOT DRINK ANY KIND OF INTOXICATING LIQUOR WHEN ON DUTY UNLESS ABSOLUTELY NECESSARY IN THE PERFORMANCE OF DUTY AND PRIOR AUTHORIZATION BY A SUPERVISOR AND NO EMPLOYEE SHALL REPORT FOR DUTY WHILE UNDER THE INFLUENCE OF LIQUOR.

IX. EMPLOYEES WILL SUBMIT TO DRUG SCREENING TESTS UPON THE DISCRETION OF THE PROJECT DIRECTOR OR HIS DESIGNEE.

4.1 MEETING WITH NARCOTICS VIOLATORS

I. All officers will have prior approval from Supervisor before meeting with suspected narcotics violators. Supervisor will assign back-up on every occasion.

II. A supervisory officer or designee shall conduct briefing of all operations with officers involved. No officer will participate in an operation unless he/she is present at the briefing. The supervisory officer will ensure that an Operational Plan Form containing pertinent information is filled out by Case Agent and that every officer involved receives a copy. Assignments will be made by supervisory officer in charge of operation and will be adhered to by every officer.

III. Media and Press Releases

The Project Director or his designee are the only persons

allowed to release information about any arrests, investigations, or activity of the Task Force to the news media.

4.1 CONFIDENTIAL INFORMANTS POLICY

I. PURPOSE

The purpose of this policy is to provide regulations for the control and use of confidential informants (CI).

II. POLICY

In many instances, a successful investigation cannot be conducted without the use of CIs. While the use of CIs is an effective tool in investigations, it can be undermined by the misconduct of either the CI or the office utilizing the informant. Therefore, it shall be the policy of this Task Force to take necessary precautions by developing sound informant control procedures.

III. DEFINITIONS

A. Confidential Informant File: File maintained in order to document all information that pertains to confidential informants.

B. Unreliable Informant File: File containing information pertaining to individuals determined generally unfit to perform as informants.

IV. PROCEDURES

A. Establishment of An Informant File System

1. The Task Force Commander shall be responsible for developing and maintaining master informant files and an indexing system.

2. A file shall be maintained in each CI used by officers. Each

file shall be coded with an assigned informant control number and shall contain the following information:

a. Informant's name

b. Name of officer initiating use of the informant.

c. Informant's photograph, fingerprints, and criminal history record.

4.2 CONFIDENTIAL INFORMANTS POLICY (Continued)

d. Briefs of information provided by the CI and its subsequent reliability. If an informant is determined to be unreliable, the informant's file shall be placed in the unreliable informant file.

e. Signed informant agreement.

f. Update on active or inactive status of informant.

B. Use of Informants

1. Before using an individual as a CI, an officer j6dst receive initial approval from a supervisor authorized to make this approval.

2. The officer shall compile sufficient information through a background investigation in order to determine the reliability and credibility of the individual.

3. After the officer receives initial approval to use a CI, an informant file shall be opened.

4. All persons determined to be unsuitable for use as a CI shall be referenced in the Unreliable informant File.

5. An officer wishing to utilize an unreliable informant shall

receive prior approval from the Commander or his designee.

C. General Guidelines for Handling CIs

1. All CIs are required to sign and abide by the. provisions of the departmental informant agreement, sample attached. The officer utilizing the CI shall discuss each of the provisions of the agreement with the CI, with particular emphasis on the following:

a. Informants are not law enforcement officers. They have no arrest powers, are not permitted to conduct searches and seizures and may not carry a weapon.

4.2 CONFIDENTIAL INFORMANTS POLICY (Continued)

b. Informants will be arrested if found engaging in any illegal activity. They will receive no special legal considerations.

c. Informants are not to take, and the department will not condone, any actions that may be considered entrapment. Entrapment occurs where the informant encourages, persuades or otherwise motivates a person to engage in criminal activity.

2. No member of this agency shall knowingly maintain a social relationship with CIs while off duty, or otherwise become personally involved with CIs. Members of this agency shall not solicit, accept gratuities or engage in any private business transaction with a CI.

3. An officer shall always have a back-up officer(s) when meeting with a CI.

4. Juveniles shall only be utilized as CIs in accordance with employee's Home Agency regulations and state laws pertaining to juveniles.

4.10 CASE AGENT'S STANDARD OPERATING PROCEDURE FOR PUTTING CASES TOGETHER

Please make sure all of the following documents are included in your Case File, if they are applicable, prior to its being given to the secretary for typing. If all the it-ems are not included, the file will be given back to you for completion.

1. Presentation Report
2. #1 Report
3. Subject Supplement/EP County detention Facility arrest/Suspect Supplement
4. Vehicle Supplements
5. Case Agent Report
6. T.F. Agents Reports
7. INS Reports and then other assisting agencies-reports
8. Border Patrol Reports
9. Search Warrant and Return (If applicable)
10. Certificate of Magistrate
11. Warrants of Arrest
12. Complaint Affidavits
13. Confessions (If any)
14. Consent to Search Forms (If any)
15. Subject's Booking Docket
16. Criminal Histories
17. Rap Sheets
18. Any paperwork found on persons
19. Vehicle paperwork - MVD Reports/Title histories, etc.
20. Chain of Evidence Report
21. Evidence inventory Check List
22. Evidence Custodian's Reports (If applicable)
23. DPS Lab Reports (If available)
24. Arrest Data Sheets
25. Marihuana & Controlled Substance Reports

It should be noted that numbers 10 thru 15 should be grouped

for each individual arrested and then you continue with #16 thru #25.

If there is to be a forfeiture, also include forfeiture forms (Exhibit A) Vehicle Title History and give Case File to the Administrative' Assistant. Please write on the front of the file in red ink "FORFEITURE" and the date due, which is 30 days from the date of arrest. If the case has been completed prior to submission or was an "ASSIST ONLY", please also write that information on the front of the file.

APPENDIX A

CASE PREPARATION/HIDTA

I. Responsibility

Any detective or officer within the Unit who initiates an Investigation shall be designated as the case officer. The case officer may initiate the investigation based on Information developed from the field or, the case may be adopted as the result of Investigative leads or case activity generated by another agency.

The case officer has the following responsibilities:

A. Before the Investigation may be fully opened, the unit commander shall be notified as to the Information known and course of action to be undertaken.

B. The case officer is the only individual authorized to determine distribution on any portion of an active investigation.

C. The case officer is the only individual authorized to supplement an investigation.

D. A case officer may authorize any other officer to supplement, distribute or participate in an
investigation.

E. The case officer must designate an alternate case officer whenever extended absences are foreseen. In any situation where the absence is unexpected, the unit commander shall designate an alternate case officer.

[Paragraph numbers added to text]

EL PASO COUNTY SHERIFF'S DEPARTMENT SPECIAL OPERATIONS BUREAU

UNI T: Financial Disruption Unit

1. DESCRIPTION: Multi-Agency Unit consisting of assigned investigators, clerical support personnel, computer and intelligence analysts and supervisory/management personnel assigned as part of Special Operations working in cooperation with the Metro Narcotics Unit and other anti-drug/counter-drug agencies.

2. OBJECTIVE: As part of the H.I.D.T.A. Investigative initiative, the unit seeks to target individuals and organizations involved in illegal narcotics trafficking and seize and forfeit drug related assets and resources In 'accordance with both state and federal laws.

3. STRATEGIES: Investigators from the F.D.U. may investigate cases which:

a. are developed by them as the result of independent investigations.

b. are referred to them from another agency or other source.

c. are initiated as the result of a subsequent Investigation.

4. Investigations are two stage in nature. Each stage has certain requirements that must be met and time limitations, which are imposed.

STAGE 1:

5. Once the investigator receive information that may have investigative value, an investigative file will be set up. From the initiation of the file, the investigator has 30 working days to establish a case foundation.

6. During the 30 day period the following Information should be developed for the investigative file:

7. - Criminal histories on any suspects - Driving records and Information from driver's license data banks including DL photographs.

8. - Property records

9. - Affiliations connecting the suspects or targets with other active or inactive criminal investigations.

10. - Basic surveillance photos of persons on properties believed involved.

11. - Information from other law enforcement sources.

12. - Information from governmental data bases.

13. - Information from private-data bases made available to law enforcement whether a fee for the information is charged or not.

14. The purpose of the first stage Investigation is to establish whether or not Information presented has workable facts. At any time during the allowed 30 working days, the investigator may formalize the preliminary findings. Once done, the case must be presented to the unit commander for review. The unit commander shall then determine whether the Investigation has sufficient merit to continue or not.

15. If the unit commander determines that the case has no value, the investigative file is inactivated and may be retained until further leads develop it as a case.

16. However, If the unit commander reviews the case and determines that it does have investigative value, it will be approved for full investigation.

STAGE 2:

17. From the date of acceptance, the investigator has 180 days to develop the case. During the course of investigation the case officer may employ any investigative technique to Include:

18. - hard target surveillance

19. - photographic surveillance

20. - phone toll analysis

21. - pen register

22. - undercover operations

23. - use of confidential informants

24. - Intelligence analysis

25. The investigator should develop a specified course of investigation and use this as a guide on the case. Investigative techniques Involving the use of schedule changes, overtime, personnel from other units or agencies, around the clock surveillance, confidential funds or any technique which could be regarded as unconventional will be cleared through the unit commander before commencing with that tactic.

26. A case is being successfully investigated as long as

investigative leads are developed and the elements of .the offense are being identified. Investigative documentation must be current and track the course of events occurring.

27. During the Investigation the case officer has the responsibility to continually brief the unit supervisor on developments. At any time during the 180 days that the investigator feels the Investigation is no longer making progress, the investigator may:

28. - redirect the investigation to another suspect or objective based on developed information.

29. - re-strategize the investigation.

30. -place the Investigation on hold until better investigative information is developed or new leads form.

31. -increase the Investigative assets involved in order to develop the case.

32. Regardless of the direction the investigator takes, the unit supervisor will be consulted and approval given. Anytime that the investigation can be concluded, the investigator will begin the specific, legal steps to conclude the investigation. All investigations will:

33. - seek to substantiate a specific criminal charge (or charges).

34. - meet the elements of the offense.

35. - have a specific suspect or suspects targeted.

36. - identify any and all property which will be subject to seizure and forfeiture.

37. - have a conclusion.

38. All Investigations which are undertaken by the unit will recognize t' hat both the criminal and civil aspects of the case will be

39. CONCLUSION: All provisions of this strategy stand as official policy for the Financial Disruption Unit. This will be considered as an appendix to the unit handbook.

[End of Excerpts]

Supreme Court, U.S.
FILED

981345 FEB 8 - 1999

No. OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

MARK B. RASMUSSON, et. al.,

Petitioners,

v.

LAWRENCE E. FROST, et. al.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

APPENDIX F
Petitioners' Documentary Evidence Supporting Third Amended Original Petition and Affidavits

SANDRA J. SHEPPARD, Esq.
Counsel of Record
6915 Boeing Drive
El Paso, Texas 79925-1107
(915) 772-4616

Attorney for Petitioners

236 pp

APPENDIX F

PETITIONERS' DOCUMENTARY EVIDENCE SUPPORTING THIRD AMENDED ORIGINAL PETITION AND AFFIDAVITS

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EXCERPTS FROM IN THE MATTER OF: THE M. B. RASMUSSON REVOCABLE TRUST, aka THE M. B. RASMUSSON 1978 TRUST

[Paragraph numbers added to text]

1. Petitioner JANET WHERRY, who is a beneficiary of the above trust, hereby presents her
petition for order transferring assets, as follows:

2. On November 24, 1987 this court made its order terminating the M. B. RASMUSSON REVOCABLE TRUST. By way of background, trust assets were distributable to two beneficiaries, JANET WHERRY and MARK RASMUSSON, who are sister and brother. MARK RASMUSSON was entitled to 60% of trust assets, and JANET WHERRY was entitled to 40% of trust assets. Over a period of about four and one-half years the trustee transferred substantial sums to each beneficiary. Said transfers were irregular in nature, and in varying amounts. Further, in nearly all instances the distributions were to one beneficiary or other, and were not made concurrently in a 60/40 ratio.

3. Attached to this petition as Schedule A and incorporated herein for all purposes is your petitioner's chronology of distributions which details the amounts of trust principal in fact received by her and her brother from July 1981 through November 18, 1985. Your petitioner is aware of no other distributions to either beneficiary during this period. Distributions to MARK RASMUSSON total $1,165,853.23. Distributions to your petitioner total $205,000. . . .

MARK RASMUSSON
RECEIPTS FROM M.B. RASMUSSON TRUST
JULY, 1981 THROUGH JANUARY, 1986

Date	Amount
07/15/81	$ 1, 500. 00
07/14/82	48,246.12
07/23/82	54,882.51
10/25/82	15,000.00
11/09/82	9,384.42
11/10/82	1,161.39
11/17/82	4,466.30
05/15/84	75,000.00
06/18/84	75,000.00
11/02/84	1,000.00
11 /06/84	9,000.00
11/16/84	2,500.00
12/17/84	5,000.00
01/11/85	2,500.00
03/15/85	12, 000. 00
03/20/85	10, 000. 00
05/06/85	61,000.00
08/22/85	1,000.00
	$ 388,640.74

MARK B. RASMUSSON
RECEIPTS FROM M.B. RASMUSSON TRUST
USED FOR RASMARK JET CHARTER
NOVEMBER, 1984 THROUGH OCTOBER, 1985

DATE	AMOUNT
11-16-84	$ 5,000
01-21-85	2,000
02-27-85	3,000
03-25-85	3,000
05-02-85	10,000
07-09-85	10,000
07-22-85	300,000
07-23-85	25,000
08-16-85	1,500
08-22-85	1,400
08-29-85	7,500
09-20-85	3,000
10-22-85	5,000
	$376,400

Account

Schedule 1, Continued [page 3 of pleading]

13.	5 California Community College; face amount of $25.000-00; bearing 4.902; due 2/1/91	$	17,941.95
14.	4,293 shares of FMC Corporation		110,037.82
15.	4,748 shares of Carnation Co.		127,082.00
16.	2,666 shares of American Standard, Inc.		86,645.00

17.	2,000 shares of Arizona Public Service Co.	32,250.00
18.	2,000 shares of PG&E	42,875.00
19.	360 shares of Portland Electric, 11.50% preferred	29,747.50
20.	Boat	1,875.00
21.	Bank of America, TCD 4267-05034	100,000.00
22.	Bank of America, TCD	150,000.00
23.	20 State of California Veteran's Bonds Bond Account of 1980; bearing 11%	108,326.44
24.	First Interstate Bank, MIA Account #7069-50990	90,000.00
25.	Trust's 1/2 interest in Income Tax Refund Receivable from Excess Salary withholding by Marras Corporation	2.856.00
26.	Account Receivable from Mark Rasmusson for Advances (principal only)	40,117.60
	Sub-Total This Page	939,754.31
	Sub-Total Page 2	555,748.86
		$ 1,495,503.19

[End of excerpts]

EXCERPTS FROM ORDER IN THE MATTER OF THE ESTATE OF VERA A. RASMUSSON, DECEASED

" . . . 10. That an Order Fixing inheritance Tax in the total amount of $269,002.00 was filed with this Court the 24th day of June, 1982; that your petitioner has paid said tax, from the assets of said estate in the following manner: that your petitioner, as Special Administrator, made an estimated payment on said tax in. the amount of $229,000.00 on May 8,1981, and that Crocker National Bank, as Executor of the Will of said, decedent made a final payment on said inheritance tax in the amount of $40,002.00 on June 30,1982.

12. That a federal estate tax return has been filed in this estate and a federal estate tax in the amount Of $749,358.26 has been paid by Petitioner from the assets of said estate as follows: that Petitioner, as Special Administrator, of $668,772.26 on account of said federal estate tax and that on or about the 12th day of Apri1,1982, your petitioner, as Executor, paid the balance of $80,586.00 on said federal estate; . . .

20. That Paragraph Tenth of the Last Will and Testament of the decedent, duly admitted to probate herein, provides for the establishment of a trust estate for the benefit of MARK B. RASMUSSON and ROBERT A. RASMUSSON, sons of the decedent; that the Fifth Codicil to said Last Will and Testament dated July 3, 1980, names CROCKER NATIONAL BANK, your petitioner herein, Trustee of the Trust created under the Last Will and Testament of Vera A. Rasmusson, deceased.

That said trust provides in part, that until each of the children attains the age of twenty-one (21) years, respectively, the Trustee shall pay to or apply for the benefit of each child so much of the net income from his share of the Trust Estate, . . .

Said trust further provides that upon each of the children attaining the age of twenty-five (25) years, the Trustee shall deliver to

such child one-third of the then balance of the principal of his share of the trust estate; that upon each of said children attaining the age of thirty years, the Trustee shall distribute and deliver to such child one-half of the then balance of the principal of his share of the trust estate; and that upon each child attaining the age of thirty-five (35) years [Mark Rasmusson reached 35 in April 1990], respectively, the Trustee shall distribute and deliver to such child all of the then balance of his share of the Trust Estate. . . .

That Robert A. Rasmusson, one of the sons of decedent, died on July 15, 1981, without issue, prior to attaining the age of thirty-five (35) years, and that in accordance with the provisions of the Last Will and Testament of said decedent, petitioner will add the share of the trust estate which would have belonged to Robert A. Rasmusson to the trust estate created for the benefit of Mark B. Rasmusson, the sole surviving son of the decedent. . . .

IT IS ORDERED AND DECREED AS FOLLOWS: . . .

8. That in accordance with the terms of the Last Will and Testament of the decedent duly admitted to probate herein, said estate be, and the same is hereby distributed as follows: . . .

TO: CROCKER NATIONAL BANK, AS TRUSTEE UNDER THE WILL OF VERA A. RASMUSSON, DECEASED, FOR THE BENEFIT OF MARK B. RASMUSSON: . . .

BONDS: . . .
COMMON STOCK:

571	shares	Archer-Daniels - Midland Company . . .
1,000	shares	Carnation Company . . .
1,500	shares	FMC Corporation . . .
200	shares	Foremost-McKesson, Inc. . ..
400	shares	Mesa Petroleum Company . .
18	shares	National City Bankcorporation . . .
562	shares	Pacific Gas and Electric Company . . .

CLOSELY-HELD STOCK (CORPORATION IN PROCESS

OF LIQUIDATION) . . .
UNSECURED PROMISSORY NOTE: . . .
REAL ESTATE LOANS: . . .
REAL ESTATE: . . .

[TOTAL] $944,483

9. That CROCKER NATIONAL BANK, as Trustee of the Trust created for the benefit of MARK B. RASMUSSON, under the Last Will and Testament of the decedent, be, and it is hereby directed to distribute one-third of said trust estate to MARK B. RASMUSSON after this Decree of Distribution is entered in these proceedings.

10. That all other property of the estate whether described herein or not, be, and the same is hereby distributed to CROCKER NATIONAL BANK, AS TRUSTEE UNDER THE WILL OF VERA A. RASMUSSON, DECEASED, FOR THE BENEFIT OF MARK B. RASMUSSON.

DONE IN OPEN COURT this 14th day of September, 1982 . . ."

/s/ WM. A. WHITE
Judge of the Superior Court

[See TAOP at App. 133, ¶ 35-36]

[emphasis in original]

RASMARK
Jet Charter Inc.

Mr. Nowack: [sic]
RE: U.S. CUSTOMS
May 22, 1989

Dear Mr. Nowack,

Thank you for the meeting on 5/2/89. As a professional Pilot in El Paso, we are constantly Harrassed [sic] at the AIRPORT CUSTOMS facilty. [sic] Last night at 8;45pm. [sic] 5/21/89 we were rudely treated, I was called "BLACK SHORTS" by your officers, during your ""ROUTINE"" search a can of juice was spilt [sic] staining the carpet in our plane. Luggage was strewn thruout [sic] the cabin, also a pair of sunglasses were missing. To further the rudeness your officer, suggested I learn to be courteous. Well I have a suggestion: YOU teach your officers not to refer to anyone as "HEY YOU" BLACK SHORTS . We intend to pursue these matters and problems caused to us by U.S. CUSTOMS until an explantion [sic] is given.

The enclosed letter was hand delivered to Senator Ted Kennedy.

Thank You For Your Consideration,

/s/ Mark B. Rasmusson
President/Owner
Rasmark Jet Charter Inc.

[See TAOP at App. 133, ¶ 35]

[Paragraph numbers added to text]

RASMARK
Jet Charter Inc.

Senator Ted Kennedy
RE: Customs - El Paso, Texas

May 22, 1989

Dear Senator Kennedy:

1. I would appreciated one minute of your time to understand our position on U.S. Customs. First of all, we operate our small charter company, Rasmark Jet Charter, Inc. in El Paso for the convenience of our customers we operate into and out of Canada, U.S., and Mexico. This means we cross borders several times a week. We have been delayed for over 2 years by US Customs at El Paso with searches by dog, strip searches, taking the airplane apart, searches of all personal belongings, being rude and uncourteous, even pointing machine guns at us with my wife and son on board. In general, we consider them to use Nazi Gestapo tactics. We are searched 95% of the for a least 1 - 2 hours delay, I am not kidding.

2. Senator, we are law abiding citizens who abhor drugs and drug users. We also own and operate our airplanes and comply with all FAA regulations, including the new mandatory drug testing programs. Yet we are still searched time and time again.

3. Cars on the bridge are searched 6% randomly, yet we are searched over 90%. Can you please explain why?

4. I have formed a complaint commission with 30 other professional pilots in my area and we had a meeting with the Director of Customs, Mr. Bill Nowack. We announced our individual

complaints. Yet the very next time through on 05/21/89 at 9:00pm, we were searched for over 1 hour with dogs and 10 agents who spilled our Mango juice into the airplane's carpet, and rifled our baggage leaving it in disarray. All while another plane was waved on by without having to deplane.

5. We agree with the war on drugs, and agree with tough laws and standards, but I do detest U.S.Customs acting and searching like "Nazi Germans"! [emphasis in original] If you would please have a word to the Director about this horrible situation, I and my fellow professional pilots would appreciate your concern.

Respectfully yours,

Rasmark Jet Charter, Inc.

/s/ Mark & Debra Rasmusson

[See TAOP at App. 133, ¶¶ 35-36]

[Paragraph numbers added to text]

Juan L. Brito
1417 Honeysuckle
El Paso, Tx. 79925

May 20, 1989

Mr. William Nowak
Director-Insp. & Control
U.S. Customs Service
P. O. Box 9515
El Paso, Texas 79985

Dear Mr. Nowak:

1. Enclosed is the list of pilots and FAA personnel that attended our meeting of 5/2/89 at Southwest's Air Rangers. There were about six or seven other pilots that preferred not to sign the roster.

2. The concensus the persons attending the meeting is that you did not agree to anything except that the inspectors should be polite, it would be of great benefit if you or Ms. Robles would answer our petition in writing.

3. One point that you may consider retraining your inspectors on is the mistaken belief that persons crossing into the U.S. have no legal or civil rights until cleared by the inspectors. I have made it a point to ask several inspectors about this and have been told by all of them that persons crossing have no civil or legal rights.

4. I would like to remind you that our offer to teach your inspectors how to search aircraft still valid. HidroGas has offered the use of their large hanger for this purpose.

5. All of the inspectors at the airport have conducted themselves in a very professional

manner during my four crossings since the meeting.

Sincerely yours,

/s/ Juan L. Brito

Page I

5-2-89
U.S. CUSTOMS MEETING
SIGN IN SHEET

NAME	COMPANY REPRESENTED	TELEPHONE NUMBER
Juan Brito	D & L Farms	915-772-6724
Gary Lynch	El Paso Natural Gas	915-772-0225
Sergio Moreno	ZARGEO INC.	505-589-1200
Harland Bevden	ZARGEO INC.	505-589-1200
Carlos Gonsalez	FAA FSS	778-6451
Sal Mugica	Same	Same
Edward Solomon		833-3088
William T. Creech		581-3401

Betty Lou Yearwood		778-363
Willie G. Nunez		525-0086
Tony Petrofes	Papa November Partnership	772-1107
Jerry Holder	Texas International	779-8400
Steve Stetler	Gas & Oil Co.	" "
Frank McGarr	" " " "	" "
Mark B. Rasmusson	Rasmark Jet Charter	772-4616
Mike Bergeron	Rasmark Jet Charters	772-4616
Floyd Draper	Hidro Gas	779-1361

[See TAOP at App. 135, ¶ 46]

[Paragraph numbers added to text]

Department Of The Treasury
U.S. Customs Service
El Paso, Texas
June 7, 1989

Mr. Mark B. Rasmusson
Rasmark Jet Charter, Inc.
6825 Convair Road
El Paso International Airport
El Paso, Texas 79925

MAN 10-02-EP:I:I JAJ

Dear Mr. Rasmusson:

1. This is in response to the complaint you recently submitted to my office regarding inspection by several U.S. Customs officers when you returned from Mexico on May 21, 1989. The allegations made have been given attention ;and a thorough inquiry has been conducted.

2. You stated that during the search of your aircraft a can of juice was spilled staining the carpet. Before the inspection had actually started, the first two officers that entered your aircraft noted that a can of juice had overturned and spilled on the carpet.

3. You also stated that a pair of sunglasses were missing. The two officers that entered the plane noticed a pair of sunglasses lying on one of the seats and one of the officers placed them overhead to insure they would not be damaged when the detector dog entered the aircraft.

4. You further stated that luggage was strewn throughout the cabin in your aircraft. The officers involved conducted a thorough search of your airplane, but upon completion of inspection all luggage was placed in the plane as it was found.

5. You further allege that you were referred to as "black shorts" and were treated rudely. The officers do not recall referring to anyone in your party as "black shorts". There is no indication that anyone was treated rudely and this inspection was conducted in a quick and professional manner.

6. Customs officers are expected to be thorough, professional and courteous as they carry out their duties. They are trained to discharge their responsibility with firmness and with a high degree of professionalism. In this situation, there is no indication revealed by our investigation that the inspectors involved acted inappropriately.

7. I trust that your future dealings with the Customs Service will be more pleasant.

Sincerely,

/s/Mike Mack
District Director
El Paso, Texas

[See TAOP at App. 135, ¶ 47]

Joseph R. Biden, Jr., Delaware, Chairman

Edward M. Kennedy, Massachusetts
Howard M. Metzenbaum, Ohio
Dennis Deconcine, Arizona
Patrick J. Leahy, Vermont
Howell Heflin, Alabama
Paul Simon, Illinois
Herbert Kohl, Wisconsin

Strom Thurmond, South Carolina
Orrin G. Hatch, Utah
Alan K. Simpson, Wyoming
Charles E. Grassley, Iowa
Arlen Specter, Pennsylvania
Gordon J. Humphrey, New Hampshire

Mark H. Gitenstein, Chief Counsel
Diana Fuffman, Staff Director

Terry L. Wooten, Minority Chief Counse
R.J. Duke Short, Minority Staff Director

United States Senate
Committee On The Judiciary
Washington, DC
20510-6275

June 8, 1989

Mark and Debra Rasmusson
Rasmark Jet Charter, Inc.
6825 Convair Road
El Paso International Airport
El Paso, TX 79925

Dear Mr. and Mrs. Rasmusson:

Thank you for your letter regarding your difficulties with border inspections. I share your concern over the circumstances surrounding your experiences with the Customs Service.

I have referred your letter to the Senate Finance Committee, which oversees the United States Customs Service. The committee's staff will further pursue this matter and keep you informed of developments.

Again, thank you for bringing your grievance to my attention. Please notify me if I can be of further assistance.

Sincerely,

/s/ Edward M. Kennedy

[See TAOP at App. 135, ¶ 48]

RASMARK
Jet Charter Inc.

Office (915) 772-4616
Mobil (915) 525-7375

Senator Ted Kennedy
315 Russell Bldg.
Office of Sen. Kennedy
Wash. D.C. 20510
Attn: Elizabeth

June 16, 1989

Dear Senator:

Again Senator we certainly enjoyed having you as a client during your Texas visit. If you ever need us again, day or nite we will be happy to serve you in the U.S., Canada, or Mexico. Please find jour brochure enclosed.

Also thanks for your interest in my problem with U.S. Customs here in El Paso. The Director Mr. Mack replied to our complaint "a thorough inquiry has been conducted." Well he didn't even call or talk to us about our complaint, he only denied everything! Personally I don't need to just complain for the sake of just complaining, and this goes much further than just this one instance. I am only asking for courteousness and professionalism at our airport and not to be delayed, as it embarrasses me in front of paying passengers to be treated rudely.

Anyway, thanks again for your time and effort, and your letter it was a moral booster.

P.S. Sir, if you would kindly autograph the enclosed pics [sic] and return in the s.a.s.e. [sic] we would truly appreciate it.

Kindest Regards,

/s/ Mark B. Rasmusson, Pres.

[See TAOP at App. 135, ¶ 49]

Lloyd Bentsen
Texas

Committees:
Finance
Commerce, Science And Transportation
Joint Economic
Joint Committee On Taxation

United States Senate
Washington, D.C. 20510

June 20, 1989

Mr. & Mrs. Mark Rasmusson
Rasmark Jet Charter Inc.
6825 Convair Road
El Paso International Airport
El Paso, Texas 79925

Dear Mr. & Mrs. Rasmusson

Thank you for your recent letter concerning inspections at the El Paso Airport by U.S. Customs officials.

In an effort to be of assistance to you, I have been in tough with the Customs Service on ;your behalf, and will contact you as soon as I have something substantive to report.

I appreciate having the opportunity to look into this matter for you, and I hope that you will let me know if I may be of additional assistance.

Sincerely,

/s/ Lloyd Bentsen

[See TAOP at App. 135, ¶ 50]

Lloyd Bentsen
Texas

Committees:
Finance
Commerce, Science And Transportation
Joint Economic
Joint Committee On Taxation

United States Senate
Washington, D.C. 20510

July 27, 1989

Mr. & Mrs. Mark Rasmusson
Rasmark Jet Charter Inc.
6825 Convair Road
El Paso International Airport
El Paso, Texas 79925

Dear Mr. & Mrs. Rasmusson:

Enclosed is a copy of an interim report I received recently in response to my inquiry on your behalf.

I will be in touch with you again as soon as I receive any further word.

Sincerely,

/S/Lloyd Bentsen

Enclosure:

[See TAOP at App. 136, ¶ 51]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C.

Jul 18 1989

DIS 6 E:EO:SP:F
89-TC-14002 GLM

The Honorable
Lloyd Bentsen
United States Senator
1100 Commerce
Dallas, Texas 75242

Dear Senator Bentsen:

This is to acknowledge rceipt of your letter dated June 20, 1989, wherein you stated that your constituents, Mark & Debra Rasmusson, are experiencing difficulties clearing Customs.

We wish to advise you that we are looking into this matter and will respond to you further as soon as possible.

Sincerely,

/s/ Charles R. Parkinson
Associate Commissioner for
Congressional and Public Affairs

[See TAOP at App. 136, ¶ 52]

Lloyd Bentsen
Texas

Committees:
Finance
Commerce, Science And Transportation
Joint Economic
Joint Committee On Taxation

United States Senate
Washington, D.C. 20510

October 10, 1989

Mr. & Mrs. Mark Rasmusson
Rasmark Jet Charter Inc.
6825 Convair Road
El Paso International Airport
El Paso, Texas 79925

Dear Mr. & Mrs. Rasmusson:

Enclosed is a copy of the report I have received from officials of the Customs Service in response to my inquiry on your behalf.

I trust this information will be of use to you and that you will find the report self-explanatory. It has been my pleasure to look into this matter. If I may be of service in the future, please let me know.

Sincerely,

/s/ Lloyd Bentsen

Enclosure

[See TAOP at App. 136, ¶ 53]

[Paragraph numbers added to text]

THE COMMISSIONER OF CUSTOMS

WASHINGTON, D.C.

October 2, 1989

DIS 6 E:EO:SP:F
89-TC-1418 GLM

Dear Senator Bentsen:

1. This is in further response to your letter dated June 20, 1989, wherein you stated that your constituents, Mark & Debra Rasmusson, are experiencing difficulties clearing Customs.

2. As you may know, the U.S. Customs Service has a multi-faceted mission at all of our borders. We are simultaneously a service agency, a collector of the revenue and an enforcement agency, incidentally, enforcing in excess of 400 provisions of law and regulations of many other federal agencies. This requires a very delicate balance of approaches and processing that might a first seem incompatible.

3. With the exception of persons and/or baggage exempt from Customs inspection because of diplomatic status, all travelers to this country are subject to as thorough an inspection as the Customs officers deem necessary to ensure that the Customs and related laws are not being violated.

4. Please assure the Rasmussons that it is not the intent of the U.S. Customs Service to subject the traveling public to unwarranted scrutiny. The traveling public is entitled to and is accorded the utmost courtesy and facilitation we can offer within the limits of our enforcement responsibilities. The U.S. Customs Service depends upon the traveling public's understanding and cooperation with its responsibility of monitoring our land and sea borders. Regrettably, our efforts cannot always be painless.

5. The U.S. Customs Service recognizes that intensified searches will cause delays, but the illegal narcotics threat posed by smugglers is so significant that passengers should expect delays. We stress in all of our training the need to be firm and inquisitive while remaining polite and tactful. In addition, we try to help reduce the inconvenience to legitimate travelers, but delays should still be expected.

6. Our procedures are routinely carried out and should not be considered personal harassment but rather a necessary part of effectively performing our mission. I regret any negative impressions of the U.S. Customs Service the Rasmussons took away with them. Unfortunately, such impressions are often the result of a lack of understanding of Customs procedures or even the need for such procedures.

7. The U.S. Customs Service receives and analyzes various types of information from various sources. In addition, we also cooperate with all other law enforcement agencies in carrying out their responsibilities. I wish to advise you that I have reviewed our records and have determined that they are properly maintained and no changes are warranted at this time. However, the records will be reviewed again in one year.

8. I regret any inconvenience or unpleasantness the Rasmussons may have experienced. In the meantime, if I can be of any further assistance to you, please do not hesitate to contact me.

Sincerely,

/s/ Michael H. Lane
Acting Commissioner

The Honorable
Lloyd Bentsen
United States Senate
Dallas, Texas 75242

[See TAOP at App. 137, ¶ 57]

AIRCRAFT TITLE REPORT
from FAA RECORDS SEARCH

Acct. No. 40251

Phone No. 915-772-4616

Insured Aircraft Title Service, Inc.
P.O. BOX 19527
OKLAHOMA CITY,
OKLAHOMA 73144
(405) 681-6663
TOLL FREE:
PHONE 800-654-4882

FOR: Rasmark Jet Charter, Inc.
6825 Convair Road
El Paso, TX 79925

Attn: Debra Rasmusson RE: N/A

FAA Records Search revealed the following TITLE information on the aircraft herein described

REGISTRATION N7GP Lear Jet MODEL 23

RECORD OWNER: Guillermo, Portillo SERIAL NO 23-082
1740 American Drive, El Paso, TX 79925

TITLE: Owner TYPE: Individual
SIGNED BY: Same as above DATE REGSTRD: 2-3-89

ACQUIRED BY: Bill of Sale DATE: 9-7-88

DATE FILED:9-19-88 RECORDED: 2-3-89 FAA Doc #Q36648

PREV. OWNER: Aero Craft International
1865 Brickell Ave. A-209,
Miami, FL 33129

DATE REGSTRD: 2-03-89

SUBJECT TO: Security Agreement DATED: 7-11-88
AMOUNT $4,000,000.00

FILED AT FAA: 8-15-88 RECORDED: 8-24-88
FAA Doc #K79996

DRAWN BY: Barron Thomas Aviation, Inc.
P.O. Box 7293, Dallas, TX 75209

IN FAVOR OF: Amarillo National Bank
P.O. Box 1611, Amarillo, TX 79181

This search is subject to the filings reflected on the index of collateral provided by the FAA and Insured Aircraft Title Service, Inc. assumes no responsibility as to the accuracy of said source, and does not guarantee, insure or warrant that said FAA index is free of error.

INVOICE

PLEASE RETURN YELLOW COPY WITH YOUR REMITTANCE

TITLE AFTER REC.	$	
TITLE SEARCH FEE	$	45.00
RUSH CHARGE	$	
PHONE CHARGE	$	
OTHER	$	
PREPAID	($)	
TOTAL due	$	45.00

Date 11-7-90
Time 8:00 a.m. CST
INSURED AIRCRAFT
TITLE SERVICE, INC.
by /s/ A. Tavor
Title Examiner

AT/eo

[See TAOP at App. 137, ¶ 57]

Rasmark Jet Charter, Inc.
24 Hour All Weather Learjet Charter Service

March 7, 1991

Guillermo Portillo
1740 American Drive
El Paso, TX 79925

Dear Sir:

As to your account with Rasmark Jet Charter, of this date your account was paid in full with check number 2510127. It also gives us great pleasure to inform you that your plane is in excellent airworthiness condition.

All inspections and time change items have been completed with, and of course the aircraft has been hangard since it's arrival in October of 1989. It has been a pleasure serving you.

We will miss our professional relationship with you, however we wish you the best of luck. The future owners of N7GP will be most fortunate with their purchase.

Once again best wishes and thank you for your business!

/s/ Mark & Debra Rasmusson
Owners/Rasmark Jet Charter

[See TAOP at App. 137, ¶ 57]

EXCERPTS FROM FAA AIRCRAFT LIEN RELEASE FORM

PART I - CONVEYANCE RECORDATION NOTICE
NAME OF DEBTOR: PORTILLO, GUILLERMO

NAME AND ADDRESS OF SECURED PARTY/ASSIGNEE:
Rasmark Jet Charter Inc.
6825 Convair Rd.
El Paso, Texas 79925

FAA REGISTRATION NUMBER: N7GP
AIRCRAFT SERIAL NUMBER: 082

AIRCRAFT MFR. (BUILDER) and MODEL: Gates Learjet 23
ENGINE SERIAL NUMBER(S): L/H 241-124 R/H 241-121

THE SECURITY CONVEYANCE DATED 11/6/90
COVERING THE ABOVE COLLATERAL WAS RECORDED BY THE FAA AIRCRAFT REGISTRY ON N7GP AS CONVEYANCE NUMBER H.B. #2603

PART III – RELEASE – (This suggested release form may be executed by the secured party and returned to the FAA Aircraft Registry when terms of the conveyance have been satisfied. See below for additional information.)

THE UNDERSIGNED HEREBY CERTIFIES AND ACKNOWLEDGES THAT HE IS THE TRUE AND LAWFUL HOLDER OF THE NOTE OR OTHER EVIDENCE OF INDEBTEDNESS SECURED BY THE CONVEYANCE REFERRED TO HEREIN ON THE ABOVE-DESCRIBED COLLATERAL AND THAT THE SAME COLLATERAL IS HEREBY RELEASED FROM THE TERMS OF THE CONVEYANCE. ANY TITLE RETAINED IN THE

COLLATERAL BY THE CONVEYANCE IS HEREBY SOLD, GRANTED, TRANSFERRED, AND ASSIGNED TO THE PARTY WHO EXECUTED THE CONVEYANCE, OR TO THE ASSIGNEE OF SAID PARTY IF THE CONVEYANCE SHALL HAVE BEEN ASSIGNED; PROVIDED, THAT NO EXPRESS WARRANTY IS GIVEN NOR IMPLIED BY REASON OF EXECUTION OR DELIVERY OF THIS RELEASE.

DATE OF RELEASE 3/07/91

RASMARK JET CHARTER, INC.

(Name of Security Holder)

SIGNATURE (in ink) /s/

Deborah Rasmusson

TITLE VICE PRESIDENT/OWNER

[End of Excerpts]

[See TAOP at App. 138, ¶ 58; App. 913, 920-21, Frost's Affidavit]]

EXCERPTS FROM PERKINS' WIRETAP AFFIDAVIT

Ronald F. Ederer
United States Attorney
Western District of Texas **FILED: May 7, 1990**

Debra P. Kanof
Assistant United States Attorney
Chief Major Narcotics Violators Unit and
Organized Crime Drug Enforcement Task Force
353 United States Courthouse
El Paso, Texas 79901
Telephone: (915) 534-6884

Attorneys for Applicant
United States of America

United States District Court
For the Western District of Texas

In the Matter of the Application	)	**Misc. No.**
of the United States of America	)	**EP-90-CR-198-H**
for an Order Authorizing the	)	
Interception of Wire Communications	)	
and the Operation of Pen Registers	)	
or Touch Tone Decoders.	)	

Affidavit Of Steven E. Perkins In Support Of Application For The Interception Of Wire And Oral Communications And The Operation Of Pen Registers Or Touch Tone Decoders.

. . . G. This affidavit is made in support of an application to intercept, for a period of thirty days, wire and oral communications of JESUS

ARMANDO FLORES, hereinafter referred to as FLORES, and members of his illegal drug trafficking organization, known and as yet unknown or not identified, to and from telephone numbers (915) 859-3885, subscribed to JESUS A. FLORES at 12112 Citation Drive, El Paso, Texas, and (915) 855-0317, subscribed to Vista Remodeling, 11840 Diamond Head, El Paso, Texas, a business owned by JESUS ARMANDO FLORES and used as a front for his drug trafficking activities.

To date the following individuals are members of FLORES' drug trafficking organization who have in the past and who I anticipate will in the future communicate with FLORES over these phone lines and who will hereinafter be referred to as "proposed interceptees"

1. Ignacio Barragan-Maldonado
2. Jose Ricardo Renteria
3. Santiago Sahagun-Mendez
4. Pedro Armando Garcia
5. Fernando Sanchez Mesa
6. Joseph Harry Peake
7. Albert Hugh Dodd
8. Norman Steve Valdez
9. Daniel Gutierrez Anchondo
10. Miguel Angel Villalba
11. Juan Carlos Lozoya
12. Rene Fernandez Corral
13. Peter Wells Seaverns

. . . FLORES currently resides at 12112 Citation Drive, El Paso, Texas, and still owns his previous residence located at 11648 James Watt Drive, El Paso, Texas. Recently FLORES has become the co-owner of the Costa Brava Restaurant located at 1160 Airway Boulevard, El Paso, Texas. The Costa Brava Restaurant has been known to DEA for several years as a safe meeting place for cocaine traffickers.

C. FACTUAL BACKGROUND:

1.) FLORES

a.. On March 7,1985, FLORES was arrested by Texas DPS Narcotics investigators after he delivered 27.3 grams of cocaine to a DPS undercover agent in El Paso, Texas. In reviewing the DPS case file on FLORES, I saw that the investigation began on March 1, 1984, when an undercover agent called FLORES at his residence telephone number

(915)593-2909 and negotiated to meet FLORES that evening to purchase cocaine. FLORES met undercover agents three times that evening; during the first meeting, FLORES negotiated cocaine quantity, quality and price; during the second meeting, FLORES delivered a sample of the cocaine that he had for sale; and at the third meeting, FLORES sold the undercover agents approximately one ounce of cocaine. During the first two meetings, FLORES drove a 1984 white Audi bearing Texas license # UQL-159 registered to a SERGIO JAQUEZ. For the third meeting, at which time FLORES delivered the cocaine, he drove a grey foreign car bearing license plates that were not registered to a foreign made vehicle, but were assigned to a 1979 Ford LTD. Prior to each meeting to negotiate for cocaine, FLORES changed the meeting location unexpectedly and all three meetings were held in separate parking lots. After selling the agents the cocaine, FLORES told the agents to call him the next time they needed anything and FLORES gave the agents three telephone numbers where he could be reached: (915) 593-2909, FLORES' home telephone number; (915) 598-7073, FLORES' business telephone number; and (915) 546-1348, FLORES' pager telephone number.

b. On June 21, 1984, one of the undercover agents called FLORES at his residence, telephone (915) 593-2909, to arrange another meeting for the purchase of cocaine. FLORES told the undercover agents to meet him in the parking lot of the Cielo Vista Shopping Mall, El Paso, Texas, at 10:30 a.m. the next day. On June 22, 1984, the undercover agent called FLORES at his residence to negotiate cocaine quantities and verify the meeting location and time. On that same date, at approximately 11:06 a.m., FLORES and another unidentified male met the undercover agents at the Cielo Vista Shopping Mall. FLORES negotiated cocaine quantity and price with the agents and instructed the agents to follow him in his vehicle. FLORES was driving a 1981 white Cadillac bearing Texas license YBR-324, registered to FLORES, 1750 Lee Trevino, El Paso, Texas. After driving a few blocks, FLORES stopped his vehicle in the middle of the road and walked back to the agents' vehicle. FLORES told the agents that they were being followed and instructed them to meet him at the Arby's on Hawkins Boulevard in fifteen minutes. At the Arby's restaurant, FLORES told the agents that the deal was off because FLORES had people following him.

FLORES also said that his friend was checking the license plates to see to whom they belonged.

c. On June 26, 1984, one of the undercover agents saw FLORES driving around the DPS Narcotics office. Qn June 27, 1984, the same undercover agent saw FLORES in the building where the DPS Narcotics office was located, 9400 Viscount Suite 109, and on two occasions, saw FLORES standing at the back door to the DPS Narcotics office.

d. On December 20, 1984, the DPS undercover agent called FLORES on his pager. Approximately ten minutes later, FLORES called the undercover agent and agreed to meet to negotiate a cocaine sale. On that same date, at approximately 2:25 p.m., FLORES met with the undercover agents and negotiated cocaine price and quantity. FLORES was driving a brown 1984 Ford pick-up truck bearing Texas license ZM-1553, registered to RAPSCO Wholesale Co., 123 S. Carolina, El Paso, Texas. After stalling the agents for almost four hours and changing meeting locations three times, FLORES sold the undercover agents approximately two ounces of cocaine. After the transaction, FLORES offered to "front" (advance) the agents approximately ten kilograms of marijuana to sell and the agents could pay FLORES the proceeds of the sale the next time they saw him. The agents declined and FLORES drove away.

e. On March 4, 1985, FLORES called the undercover agent and offered to sell him 600 pounds of marijuana at $400.00 per pound. The undercover agent told FLORES that he would purchase all 600 pounds of marijuana on March 7, 1985. On March 5, 1985, the undercover agent called FLORES at his residence, 11648 James Watt, El Paso, Texas, and was advised by FLORES that he had the 600 pounds of marijuana ready to sell and would bring the undercover agent a sample of the marijuana the following day. On March 6, 1985, FLORES called the undercover agent and told him that his friend, his source of supply, was "busted" (arrested) with the 600 pounds of marijuana and some cocaine. FLORES went on to say that he thought he could supply the undercover agent with sixteen ounces of "sheet rock" (meaning cocaine) and instructed the agent to call him the next

morning.

f. On March 7, 1985, via telephone conversation, FLORES arranged to meet the undercover agents in the parking lot of the Mervyn's Store on Gateway West, El Paso, Texas, so FLORES could sell the undercover agents sixteen ounces of cocaine. The arrangements were made after Sergeant Ron Stinnett paged FLORES on his pager, telephone (915) 546-7673. On that same date, at approximately 2:15 p.m., FLORES met the undercover agents and told them that he had seventeen ounces of cocaine for sale but that he only had one ounce with him. FLORES said that if the agents would buy the one ounce now he would go get the other sixteen for them. The undercover agents saw the one ounce, gave the pre-arranged arrest signal and FLORES was arrested. At the time of his arrest, after the agents identified themselves as police officers, FLORES fled and had to be pursued and apprehended. After his arrest, FLORES consented to a search of his residence, located at 11648 James Watt, El Paso, Texas. In FLORES' residence, the agents found a small bottle containing cocaine, a marijuana pipe, three cocaine snorters, one cocaine spoon, and one funnel. FLORES was charged with three counts of delivery of a controlled substance, to-wit: cocaine, and was placed in the El Paso County Jail in lieu of 75,000.00 bond.

g. During an interview with DPS Narcotics Sergeant Ron Stinnett, one of the undercover agents, FLORES stated that he wanted to provide information in exchange for favorable consideration at the time of his sentencing. Several days later, Sergeant Stinnett met with FLORES and was told by FLORES, that he had obtained an attorney and was instructed, by counsel, not to cooperate with the government. FLORES told Stinnett that for a fee of $20,000.00 the attorney could promise that his case "would never hit the docket." As of April 25, 1990, FLORES' cocaine case has not been placed on the docket and has yet to be prosecuted in any Texas State District Court.

2.) Proposed Interceptees

a. On September 28, 1987, during the investigation of a major

cocaine trafficking organization headed by AUDELTO ARZOLA-AMAYA,members of the DEA El Paso, Texas, OCDETF group seized a 1984 motor home from the residence of FLORES located at 11648 James Watt,El Paso, Texas. The seizure was based on probable cause to believe the motor home had been used to transport approximately one thousand pounds of cocaine from El Paso, Texas, to California. At the time of the seizure, the agents talked to FLORES, at his residence, and were told by FLORES that he had borrowed the motor home from a friend named STEVE VALDEZ and that he was going to use the motor home for recreational activities. . . .

b. In January 1988, agents of the Los Angeles DEA ... interviewed a confidential informant who, for several years, had been providing the DEA with information about major drug traffickers, based in the country of Mexico. . . . When DEA . . . subpoenaed subscriber information for two of the telephone numbers from this list, he learned that one of the telephone numbers was subscribed to FLORES at his residence and another of the telephone numbers was subscribed to by Vista Remodeling; . . .

c. On April 28, 1988, Detectives of the El Paso Police Department Narcotics Unit seized five thousand, six hundred, and seventy (5,670) pounds of marijuana . . . Arrested as a result of this seizure were . . . JOSE EDUARDO BARRAGAN (the son of proposed interceptee IGNACIO BARRAGAN). . . .On June 3, 1988, DEA Special Agent Palmira Lopez issued a subpoena to Southwestern Bell Telephone Company for subscriber information . . .

d. I have been told by INS Special Agent Ron Ayers, of the El Paso DEA OCDETF Group, that on October 5, 1988, while surveilling the residence of a major drug trafficker (and OCDETF target) named JACK MOODY STRICKLIN JR., . . .DEA Special Agent Thomas Lenox reported seeing a Chevrolet 4x4 pick-up truck . . . on several occasions parked in the circle driveway of FLORES' residence . . .
e. On February 2, 1989, Detectives of the El Paso Police Department Narcotics unit seized approximately one thousand, one hundred (1,100) pounds of marijuana from inside two vans parked in a public parking lot in El Paso. . . . I received information from a confidential source that the

1,100 pounds of marijuana seized by the El Paso Police Department Narcotics Unit on February 2, 1989, belonged to FLORES, . . .

In July of 1989, I met with FBI Special Agent Gary Webb of the El Paso, Texas, FBI office, . . .Special Agent Webb told me t6hat Skowronski had been arrested at the U.S. Border Patrol checkpoint .. . . in possession of 415 pounds of marijuana.

f. I have been informed by DEA Special Agent Thomas Lenox that in July, 1989, the El Paso, Texas, office of the Internal Revenue Services (IRS), Criminal Investigation Division began investigating FLORES and his business, Vista Remodeling for tax evasion. In November, 1989, Special Agent Lenox met with IRS Special Agent Robert Martinez and was told that it appeared that FLORES was spending money far beyond that of his reported income. Special Agent Martinez also said that, although Vista Remodeling did do a small amount of legitimate business, it was his opinion that Vista Remodeling was nothing more than a front to give FLORES an appearance of legitimacy and a vehicle for laundering drug money. ...

g. On August 7, 1989, I participated in the surveillance of a meeting between a cocaine trafficker identified as JOSE ANTONIO AYALA and undercover DEA Agents to negotiate for the future delivery of fifty kilograms of cocaine. . . . This investigation culminated on August 8, 1989, when JESUS MONCADA delivered fifty kilograms of cocaine . . . to undercover agents . . . Subsequent investigation revealed that JESUS MONCADA is FLORES' brother-in-law . . .

Several months later, while working on an unrelated case, IRS Special Agent Bob Martinez interviewed Mr. PETE SEAVERNS, the owner of Dove Motor Company. During the interview, Mr. SEAVERNS stated that FLORES did not work for him and that he did not have any part-time salesmen working at Dove Motor Company.

h. On August 31, 1989, Detectives of the El Paso Police Department Narcotics Unit seized approximately ten kilograms of cocaine during an undercover operation conducted at the Brass Bull Bar, . . . on September 1, 1989, El Paso Police Department Narcotics

Detectives executed a search warrant . . On August 18, 1989, that same pager number had been subpoenaed by Dfetective Juan Sanchez of the El Paso Police Department. . .Detective Sanchez also said that his confidential informant told him that ROYBAL was FLORES' right hand man, . . .

i. On November 14, 1989, I met with Texas DPS Sergeant John Cottle who advised me that FLORES had come up in a DPS reverse undercover operation in Houston, Texas. . . .

On March 15, 1989, during a surveillance conducted at the Costa Brava Restaurant in El Paso, Texas, surveillance agents saw PEDRO GARCIA with FLORES. . . .

During surveillance conducted at FLORES' residence, . . . DEA Special Agent Thomas Lenox has seen JOSEPH PEAKE on several occasions from December 11, 1989, to the present. On March 12, 1990, I saw JOSEPH PEAKE meet with FLORES and two other unidentified individuals at Sun West Cellular Inc., . . .

k. On November 15, 1989, DEA Special Agents and officers of the Ontario Police Department, Ontario, California, seized $1,393,945.00 U. S. currency, as drug proceeds from ALBERT HUGH DODD at the Rodeway Inn . . .

On December 19, 1989, DEA Special Agent Thomas Lenox debriefed a reliable, confidential informant(reference Section III D, paragraph 1(d)) who told him that one of FLORES' couriers had approximately two million dollars in U.S. currency seized from him somewhere in California, sometime within the last one or two months. The court authorized pen registers have recorded several calls from FLORES' residence telephone and from the telephone at Vista Remodeling, FLORES' business, to telephone number (915) 859-5304, which Southwestern Bell Telephone Company shows as subscribed to: ALBERT HUGH DODD, 8401 Waterfall, El Paso, Texas.

D. Information from Reliable Confidential Sources

1.) From August 1989, through December 1989, an individual who I shall refer to as S-1 provided information about FLORES and his illegal drug trafficking organization to DEA Special Agents Thomas Lenox and Palmira Lopez and to El Paso Police Department Narcotics Detective Juan Sanchez. S-1 is and has been a reliable confidential informant for both the El Paso, Texas, DEA and the El Paso Police Department Narcotics Unit for several years. The information and introductions provided by S-1 in the past have developed into several investigative cases which have resulted in the seizures of illegal drugs, and U.S. currency drug proceeds, and in the successful prosecution of many drug trafficking violators. Due to the drug trafficking violation cases that have been developed from S-1's information, and the corroboration of S-1's information when checked by law enforcement agencies in the past, both the DEA and the El Paso Police Department Narcotics Unit consider the information provided by S-1 to be reliable and correct. S-1 has provided the following information concerning the drug trafficking activities of FLORES and his organization:

a. FLORES lives at 12112 Citation, El Paso, Texas, and is the owner of a business called Vista Remodeling, located at 11840 Diamond Head, El Paso,Texas.

b. FLORES is the head of a large scale drug trafficking organization based in El Paso, Texas, which is distributing multi-ton quantities of marijuana and hundred kilogram quantities of cocaine per month.

c. FLORES distributes his drugs to buyers in Texas, California, Oregon, and Colorado. FLORES purchases his marijuana from the GILBERTO ONTIVEROS organization and purchases his cocaine from the SANTAMARIA organization. JOSE SANTAMARIA and the recently murdered ENRIQUE SANTAMARIA are part of the SANTAMARIA organization (Reference Section III, C paragraphs 2(h) and (j)).

d. JOE RENTERIA is FLORES' connection to the buyers in California. One of FLORES' couriers had about two million dollars in U.S. currency seized from him somewhere in California in November

or early December of 1989. The money seized was proceeds from FLORES' drug trafficking activities (Reference Section III, C paragraphs 2(d)(k))..

e. Prior to his arrest, LUIS ROYBAL was FLORES' right hand man in his drug transactions. The ten kilograms of cocaine that were seized when ROYBAL and GEORGE ENRIQUEZ were arrested belonged to FLORES (Reference Section III C, paragraph 2(h).

f. ROYBAL claimed to be the driver who delivered the fifty kilograms of cocaine to the residence of GEORGE ENRIQUEZ, 940 Agua Prieta, El Paso, Texas, on August 8, 1989. The 50 kilograms of cocaine that were seized which resulted in the arrests of JOSE A. AYALA, DAVID C. TAYLOR, and JESUS MONCADA belonged to FLORES (Reference Section III C, paragraph 2(g)).

g. FLORES has many close criminal associates who assist him in his daily drug activities, including: Attorneys DANNY ANCHONDO, and MIKE VILLALBA; and JOEL HERNANDEZ, STEVE VALDEZ, GERMAIN ORTIZ, IGNACIO BARRAGAN, JOE RENTERIA, and RAUL CHACON.

h. FLORES conducts almost all of his illegal drug business utilizing telephones.

i. Approximately two months after the fifty kilogram cocaine seizure when JESUS MONCADA was arrested (paragraph f above) a Texas State District Court Judge signed an order to monitor FLORES' telephones; the judge notified El Paso Atorney MIKE VILLALBA hours after signing the order. MIKE VILLALBA in turn notified FLORES that his telephones were being monitored by Texas State DPS Narcotics (Reference Section III, F).

S-l is currently in a position to continue providing information about the illegal drug trafficking activities of FLORES and his organization, primarily from the standpoint of modus operandi. S-1 will also be able to help in the identification of subjects as this investigation continues. Because of S-l's involvement in related cases which have

resulted in the arrests of defendants and the seizure of drugs and drug proceeds, S-1 is no longer in a position to introduce undercover agents to FLORES or his associates or to locate drug storage locations when they are being used by the FLORES organization and contain illegal drugs. Further, to have S-1 infiltrate FLORES' drug trafficking organization at this time would put S-1 in a life threatening situation that would be too dangerous and an unreasonable risk.

2.) In December 1989, an individual who I shall refer to as S-2 began providing information about illegal drug trafficking to Special Agents of the DEA in El Paso, Texas. From the information S-2 has provided, the DEA has initiated two investigative cases on drug trafficking organizations based in El Paso, Texas. In one of the investigative cases S-2 has introduced undercover agents to drug traffickers and the subsequent negotiations have resulted in the acquisition of drug evidence. It is anticipated that both investigative cases will result in significant drug seizures and in the arrest of several drug traffickers. The information provided by S-2 has been checked and corroborated by DEA agents and in all cases the information from S-2 has proven to be true and correct. For these reasons, I believe the information provided by S-2 to be reliable and correct. S-2 has provided the following information concerning the drug trafficking activities of FLORES and his organization:

a. JUAN LOZOYA is a member of FLORES' drug trafficking organization. LOZOYA will find customers for FLORES' illegal drugs and will act as a middleman or buffer during the negotiations and the transaction. LOZOYA will meet with buyers and eventually arrange for delivery of the drugs. However, FLORES will make all the decisions. FLORES does not meet the customers.

b. LOZOYA, through FLORES, has the capability of arranging cocaine transactions from between ten and one hundred kilograms of cocaine at a time. LOZOYA is in constant contact with FLORES, calling him or meeting with him four to five times a day regarding drug transactions.

c. LOZOYA carries a portable cellular telephone and calls

FLORES at his residence on Citation, at his business, "Vista Remodeling" and on FLORES' cellular telephone when arranging the drug transactions. LOZOYA has told S-2 in the past that he needed to go to Vista Remodeling to talk to FLORES regarding a drug deal.

d. S-2 has heard LOZOYA, on the telephone, arranging drug transactions with FLORES. When FLORES or members of his organization are talking about drug transactions on the telephone, they will use code words when referring to cocaine, marijuana, the quantity of drugs needed, or the quantity to which the organization has access. Many of the code words will be terminology used in construction or for construction materials. S-2 has also heard them use "Kikos" meaning kilograms, "libretus" meaning pounds, the phrase "I have an invitation to the party for you," meaning I have a sample of cocaine for you, and they will often refer to samples as the "small gift." The members of the organization will sometimes try to minimize or use multiple code words when talking on cellular telephones because they know that police scanners can be used to monitor cellular telephone conversations.

e. S-2 said that when LOZOYA needs to meet with FLORES, they meet at Vista Remodeling, the Costa Brava Restaurant, the Ay Cocula Restaurant, or at convenience stores. S-2 believes that LOZOYA conducts the cocaine for money transactions in hotel rooms at various hotels throughout the El Paso, Texas, area.

f. SANTIAGO SAHAGUN-MENDEZ is the head of a cocaine and marijuana smuggling organization that imports drugs into the United States from Mexico and transports money back into Mexico. SANTIAGO SAHAGUN-MENDEZ hires out his organization to any illegal drug traffickers who need drugs or money smuggled. SANTIAGO SAHAGUN-MENDEZ coordinates his smuggling activities on the mobile cellular telephone that he carries. S-2 has seen SANTIAGO SAHAGUN-MENDEZ at the Costa Brava Restaurant on several occasions. SAHAGUN-MENDEZ's brother, JOSE LUIS SAHAGUN, was convicted by a jury for delivery of 9 kilograms on cocaine on May 18, 1989.

g. When talking to FLORES and when negotiating his drug

transactions, LOZOYA uses two mobile cellular telephones: telephone number (915) 525-6571 and (915) 525—5097.

h. S-2 identified other members of the FLORES drug trafficking organization as: (1) RICARDO (LNU) AKA: "EL ENGINERO"; (2) STEVE (LNU); and (3) PETE (LNU). PETE (LNU) sells cocaine for FLORES and works at Dove Motors in El Paso, Texas, (Reference Section III C, paragraph 8).

S-2 will continue to provide DEA Special Agents with information about the illegal drug trafficking activities of JUAN LQZOYA and his criminal associates including FLORES. S-2 may be able to introduce an undercover DEA agent to LOZOYA to negotiate for a cocaine delivery in the future. S-2 does not know FLORES personally and has only met FLORES on a couple of occasions when he/she was with LOZOYA. FLORES will not talk to S-2 nor will he talk to LOZOYA about drug transaction in S-2's presence. According to S-2, if an undercover agent were to negotiate with and purchase cocaine from LOZOYA, the undercover agent would never meet FLORES. Further, to have S-2 attempt to infiltrate FLORES' drug trafficking organization would be out of character for S-2 and would put S-2 in a life threatening situation that would be too dangerous and an unreasonable risk. Also, to arrange an undercover cocaine purchase from LOZOYA, even if it resulted in the arrest of FLORES would not accomplish the goals of this investigation in that it would neither identify nor provide prosecutable evidence of FLORES' drug sources and customers nor would it neutralize FLORES' drug trafficking organization in that the vast majority of the organization's members would not be identified and would inevitably continue trafficking in illegal drugs.

3.) On February 27, 1990, an individual, who I shall refer to as S-3, began providing information about the illegal drug trafficking activities of JAMES and MIGUEL TERRAZAS and their associates in El Paso, Texas. On March 14, 1990 MIGUEL TERRAZAS, CHAD FALCO, JOEL REGAN and ROSEMARIE COOM were arrested after they delivered two kilograms of cocaine to DEA undercover agents in El Paso, Texas. In review of the investigative case file, I discovered that

all of the information that S-3 provided prior to this seizure about MIGUEL TERRAZAS was true and correct. Due to this and the corroboration of the rest of 5-3's information, as detailed in the body of this affidavit, I believe that the information provided by S-3 is reliable and correct. During interviews with DEA Special Agents, S-3 provided the following information about FLORES and his illegal drug trafficking organization.

a. JAMES and MIGUEL TERRAZAS are brothers living in El Paso, Texas, who work as middlemen for a much larger illegal drug trafficking organization that is headed by FLORES. FLORES, through his organization, distributes large quantities of cocaine and marijuana. FLORES and his partner, TONY SOLO, own the Costa Brava Restaurant in El Paso, Texas, which is a . . ."

[End of Excerpts]

[See TAOP at App. 147, ¶ 100; App. 914, ¶ 10, Frost's Affidavit]

EXCERPTS FROM INTERVIEW
OF DEBRA RASMUSSON
AUGUST 23, 1990 AT APPROX. 1:00 P.M.
DATE PREPARED: AUGUST 26, 1990
DEA-6/FILE NO M7-90-Z002

"2. On August 23, 1990, at approximately 1:00 PM, Special Agent Steven E. Perkins and Intelligence Analyst Eli Chavez went to RASMARK JET CHARTER, INC., located at 6825 Convair Road, El Paso, Texas, and interviewed Debra RASMUSSON, the Vice-president manager of RASMARK JET CHARTER, INC., regarding the return on Subpoena #M7-90-512. Debra RASMUSSON introduced herself as the wife of Mark RASMUSSON, the owner and president of RASMARK JET CHARTER, INC. Debra RASMUSSON said that of the nine names listed on the Subpoena, she was only familiar with: Jesus A. Flores, Vista Remodeling, Joe Peake, and Pete SEAVERNS. She went on to say that Pete SEAVERNS was a personal friend of her and her husband whom they had known for approximately three years. She further stated that they had purchased three personal car, and a Cadillac for their RASMARK company car. According to Debra RASMUSSON, she and her husband were good friends with Pete SEAVERNS and his wife.

3. Debra RASMUSSON said that she had known that DEA agents would be coming to talk to her ever since she read about Jesus FLORES' arrest on drug trafficking charges in the newspaper. When asked if she knew that FLORES was a drug trafficker, Debra RASSMUSON said no, she thought that Jesus FLORES was a "hit man" because they flew him all over the country, he paid in cash and he seldom took any luggage with him. Debra RASMUSSON went on to say that they never transported freight for FLORES and he always paid in cash, usually in denominations of $50.00 bills. She also said that they had never flown FLORES into Mexico and that on several occasions FLORES had called her, scheduled a chartered jet flight, but

when the flight was ready, Joe PEAKE or someone else would show up to take the flight instead of Jesus FLORES. According to Debra RASMUSSON, Jesus FLORES had paid her, in cash for flights, and sometimes Joe PEAKE would pay her in cash for flights chartered by FLORES.

4. When asked about the flights that Jesus FLORES had chartered, Debra RASMUSSON said that FLORES had chartered the following: (1) One flight to Tucson, Arizona; (2) two flights to Orlando, Florida; and, (3) two flights to Los Angeles, California. When asked who went on the flights, Debra RASMUSSON said that she recalled Jesus FLORES on one of the flights to Los Angeles and Joe PEAKE, a young Hispanic male with a portable CD player, and at least one other Hispanic male on flight to Miami, Florida. She remembered the young man with the CD player with Joe PEAKE in the office, and she saw the other Hispanic male who was going on the flight walking back and forth in front of the office window. Debra RASMUSSON said that she did not know who was on the other flights that Jesus FLORES chartered; however, that information may be on the invoices or the pilot's flight logs.

5. When asked about the information requested on the Subpoena, Debra RASMUSSON said that there was a problem. She did not have the records ready and the records were at her house and not in the RASMARK office. Debra RASMUSSON also said that on one of the last flights to Florida that Jesus FLORES chartered, FLORES had requested to see his file. Debra RASMUSSON said that she put the file on the desk for Jesus FLORES to review and has not seen the file since. Acccording to Debra RASMUSSON, she thought that either Jesus FLORES or the young male with the CD player took the file and never returned it. Debra RASMUSSON said that Jesus FLORES still owed them some money for his chartered flights but she did not know how much. She said that when she found out that FLORES had been arrested on drug charges, she thought that he would come in and pay her when he got out on bond. When FLORES did not come back in and pay, she spoke with her accountant and said that they were going to write the money owed by FLORES off as a loss. When asked how she could write off a loss on an unknown amount of money, Debra

RASMUSSON said that she had the invoices, manifests, and billing sheets at home concerning FLORES chartered flights, and that she could find out exactly how much money FLORES owed them. She went on to say that the documents in the missing FLORES file were only copies and that she had the originals at home.

6. In response to the agents' questions about who went on the three flights that FLORES chartered to Florida, Debra RASMUSSON said that there we only two flights to Florida and that she did not know who was on them because she was on vacation in Colorada when the flights left and returned. When reminded that she had told the agents about two flights to Orlando and one flight to Miami, Florida, Debra RASMUSSON stated that she did not know if there were two or three flights to Florida because she had been on vacation at the time. When reminded about the flight to Miami, Florida, with Joe PEAKE, the young male with the CD player and the other Hispanic male she saw outside the office window, Debra RASMUSSON said that she was not sure if she had been there or not. When reminded about the file she thought that FLORES or the young male with the CD player took and did not return, Debra RASMUSSON said she was there when the flight left but she was out of town when the flight returned. When reminded that Pete SEAVERNS had spoken to her while waiting for the flight to return, and that Pete SEAVERNS had picked up both PEAKE and the male with the CD player, Debra RASMUSSON said that she did remember being there when the flight returned and Pete SEAVERNS did pick up Joe PEAKE and the young male with the CD player.

7. When the agents asked for the subpoenaed records and to talk to Mark RASMUSSON, Debra RASMUSSON said that Mark RASMUSSON was with Pete SEAVERNS but "it was okay" because they were just making the title arrangements so the RASMUSSONs could buy Joe SEAVERNS' house. She went on to say that Joe SEAVERNS was selling DOVE MOTORS and was selling them his house for a great price because Joe SEAVERNS was going to leave El Paso. Debra RASMUSSON then said that there were not many records on FLORES' chartered flights because the file was missing. When the agents reminded Debra RASMUSSON that she had stated the only documents in FLORES' missing folder were copies. Debra

RASMUSSON said that she would give the agents invoices, manifests, billing sheets, bank money deposits and refueling bills for all of Jesus FLORES' flights. When the agents told Debra RASMUSSON that there were chartered jet flights into Mexico, she said that she would research the Mexico flights and provide the agents with everything on those flights as well.

8. Arrangements were made for a meeting at 3:30 PM on that same date with Debra and Mark RASMUSSON, the pilots of the flights and the agents at the RASMARK JET CHARTER SERVICE office. Debra RASMUSSON said that she would bring the subpoenaed documents and information to the meeting. The agents then departed the RASMARK office.

[End of Excerpts]

[See TAOP at App. 147, ¶100; App. 916, ¶ 16, Frost's Affidavit]

EXCERPTS FROM INTERVIEW OF MARK AND DEBRA RASMUSSON AND RASMARK PILOT JERRY BURNETT AUGUST 23, 1990 DATE PREPARED: SEPTEMBER 17, 1990 DEA-6 FILE NO M7-90-Z002

"2. On August 23, 1990, at approximately 3:35 PM, Special Agent Steven E. Perkins and DEA Intelligence Analyst Elias Chavez went to RASMARK JET CHARTER INC., located at 6825 Convair Road, El Paso, Texas, and interviewed Jerry Burnett, Patrick Moulsh, Mark and Debra RASMUSSON. For details concerning the establishing of this meeting and the previous statements of Debra RASMUSSON, reference is made to DEA-6 under this case file title and number by Special Agent Steven E. Perkins dated August 26, 1990, Report Re: Interview of Debra RASMUSSON on August 23, 1990.

3. During the first part of the interview, RASMARK pilot Jerry Burnett and RASMARK co-pilot Patrick Mlosch told the agents about three RASMARK charters that they flew for Jesus FLORES, as follows:

a.. June 9, 1990 - flight with seven or eight passengers from El Paso, Texas, to Orlando, Florida, and return to El Paso with no passengers.

b. June 10, 1990 - flight with seven passengers from El Paso, Texas, to Orlando, Florida, and layover. The next day flight with eight passengers from Orlando, Florida, to Miami, Florida, and return to El Paso, Texas, with one passenger, Joseph PEAKE.

c. June 12, 1990 - flight with three or four passengers from El Paso, Texas, to Miami, Florida, and layover. The next day flight from Miami, Florida, back to El Paso, Texas, with two passengers, including Joseph PEAKE.

Then Mr. Burnett told the agents about another RASMARK charter he flew for Jesus FLORES as follows:

d. February or April, 1990 - flight with four passengers, one of whom was Jesus FLORES, from El Paso, Texas, to Obregon, Mexico. Continued flight with six or seven passengers including FLORES, from Obregon to Matamoros, Mexico. Continued flight with three passengers, including FLORES, from Matamoros, Mexico, back to El Paso, Texas.

Mr. Burnett also mentioned that he thought he flew some of FLORES' people to Cancun, Mexico. (Note: For details concerning the four above referenced flights, reference is made to DEA-6 under this file title and number dated September 7, 1990, by Special Agent Steven E. Perkins, Report Re: Interview of RASMARK Pilot Jerry L. Burnett.) Mr. Burnett said that he had heard that FLORES was going to buy a Lear 36 jet.

4. Debra RASMUSSON told the agents that she had checked at home and only found the pilot duty time log sheets for the three Florida trips, copies of which she provided to the agents. Debra said that she could not find anything on the Los Angeles trips and that she did not know about the Mexico trip. She said that in order to find the paperwork concerning any of FLORES' flights, the agents would have to provide her with the dates and destinations of the flights. Debra went on to say that with the Jesus FLORES/VISTA REMODELING file missing, she would have a hard time finding any paperwork on the flights. All of the documents concerning FLORES' flights were gone because all of the paperwork was in the missing file. When reminded that she had told the agents that the documents in the missing file were only copies and that she still had the originals at home, Debra said that all documents relating to FLORES' flights were in the Jesus FLORES/VISTA REMODELING file, and with the file missing, all the documents concerning FLORES' flights were gone.

5. When asked how she handled the paperwork concerning chartered flights, Debra stated the following:

a. When the flight was chartered, a trip sheet was made up.

b. When the flight was taken, all invoice was made

c. The trip sheet, invoice, and all other documents relative to the flight were attached and put into the client file.

d. When payment was made, the invoice was marked paid and put back into the client file, and the payment was deposited in the bank.

e. The client was provided a copy of the invoice.

f. At the end of the month she would go through the files, add up the paid and unpaid invoice information, and turn the information over to her account, Albert Apodaca, who would do the monthly reports.

6. Debra RASMUSSON said tht in FLORES' case, either he would pay in cash or he wuld send over someone with cash to pay his invoices. At FLORES' request, she would leave all copies of the invoicer in the file; FLORES did not want his copy. When FLORES or one of his people took the file, all of the documents were lost. Debra went on to say that she remembered receiving $18,000.00 cash on FLORES' account, and that Joe PEAKE brought in the cash to pay for one of FLORES' Los Angeles trips. According to Debra, they "got burned" and FLORES still owes on some of the Florida trips. She also said that she still thought that there were only two Florida trips. When asked, Debra said that she handled the books and the financial transaction and therefore should know about all flights, payments, and accounts. However, Debra said that this was the first she had heard of any flights for FLORES into Mexico.

7. When the agents asked about ledgers or files such as: accounts receivable, accounts payable, expenses, repairs, general ledgers, bank deposit ledgers, or late payment records, Debra said that there were no other records and that she just kept everything in the client files. Debra also said that she did not keep two sets of books and that she did not keep a set of records at home; everything was in the files at RASMARK which she kept locked. According to Debra, she

and Mark were the only ones with keys to the files. The agents said that it seemed strange that a business could operate with no records other than what was in the client files and if the files were lost there would be no records at all and the business would have no supporting documents as to who owed them money, at that point Mark RASMUSSON aggressively stated, "Are you trying to tell me how to run my business?"

8. The agents told Mark RASMUSSON that they were just trying to find any and all records relative Jesus FLORES. Mark said that FLORES was just another customer who chartered flights and all the records concerning FLORES' flights were missing. When asked, Mark said that no other files were missing, and that they generally did not lose files. In answer to the agents' questions, Mark said that FLORES was about their only customer who paid in cash and that he had never flown FLORES anywhere. Mark said that he did not have a personal relationship with FLORES and that FLORES was just another client. When asked if on June 12, 1990, Mark had flown a flight for FLORES, Mark responded no. When asked again, Mark said that he flew a Hispanic male, his wife, and a child to Phoenix, Arizona, for FLORES. Mark said there was no paperwork done that flight because it was just "a one hour hop." When asked how much a one hour hop would cost, Mark said maybe $2,000.00 at the most. When asked if it was not worth billing or invoicing a $2,000.00 flight, Mark said yes. When ask if he did $2,000.00 complimentary flights for others of his customers, Mark did not reply. When asked if he had ever received any cash from FLORES, Mark said that Debra handled the money. W hen asked if he made arrangements with FLORES for payment and/or received approximately $11,500.00 cash from FLORES or one of FLORES' people to pay for flights to Mexico and Los Angeles, California, on May 26, 1990, Mark said that he and his wife took a vacation to Cancun and Belieze. According to Mark, they did not return to El Paso until late on May 27, 1990, and were not even in town on May 26, 1990.

9. In response to the agents' questions, Mark RASMUSSON said that when he needed to contact FLORES for payment, he would call him at (915) 525-8408 or on beeper (915) 599-4364. Mark said that FLORES was not dependable and would call him and charter flights that

he would not show up to take, or FLORES would charter the flights and send other people to take the flight without FLORES. He also said that FLORES would call and make arrangements to make payment and not show up, or FLORES would send someone else to make the payment a couple of days later. Mark went on to say that he had been to FLORES' big house in East El Paso once when he went there to collect the money FLORES owed for chartered flights. When asked, Mark said that FLORES did not own any airplanes. When asked if FLORES had a small propeller driven airplane like a Cessna, Mark said as far as he knew, FLORES did not have any airplanes and that is why FLORES chartered flights through them. Mark said as far as he knew, FLORES was in the construction business and must be very successful at it. Mark and Debra both said that they had no records of FLORES' flights; however, they would try to reconstruct the paperwork for the flights that FLORES took. The agents instructed the Rasmussons to mark any reconstructed paperwork as reconstructed so there would be no question later about the documents origin.

[End of Excerpts]

[See TAOP at App. 160, ¶ 145; App. 918, ¶ 21, Frost's Affidavit]]

EXCERPTS FROM RETURN ON SUBPOENA #M7-90-525 TO APODACA, JENSEN AND COMPANY AND INTERVIEW OF ALBERT APODACA AUGUST 28, 1990 DATE PREPARED: SEPTEMBER 13, 1990

Details:

1. Reference is made to all DEA-6's written under this file number and title as they relate to RASMARK JET CHARTER INC., Mark RASMUSSON, and Debra RASMUSSON.

2. On August 28, 1990, Special Agent Steven E. Perkins and Intelligence Analyst Elias Chavez went to Apodaca, Jensen and Company, located at 800 E. Wyoming, Suite A, El Paso, Texas with Subpoena #M7-90-525 and interviewed Albert J. Apodaca and Keven L. Jensen. Mr. Jensen told the agents that they had held a partners meeting on August 27,1990, concerning potential problems with the RASMARK account. Mr. Jensen said that Albert Apodaca was the person most familiar with the RASMARK account and with Mark and Debra RASMUSSON. According to both Mr. Jensen and Mr. Apodaca, Mark RASMUSSON came to their RASMUSSON came to their office in the afternoon of August 27, 1990, and talked with them about amending his May 1990 monthly report to include an $11,000.00 cash transaction. Mark was advised that the monthly report could be amended only with the amended report attached to the original report and an explanation of the correction included. Mark asked if he should reconstruct invoices to match the amounts that the Government agents knew about. Mark was advised to report all transaction accurately and correctly. Mark told Apodaca, Jensen and Company, just to protect themselves, they should not release any information about RASMARK without a subpoena or court order. Mr. Apodaca and Mr. Jensen were alarmed by Mark RASMUSSON's actions and statements causing them to feel that there may be a problem with the RASMARK account.

3. In response to the agents' questions, Mr. Apodaca said that he handled the RASMARK account which entailed the following: (1) preparing income tax returns for RASMARK JET CHARTER INC., Mark and Debra RASMUSSON; (2) preparing monthly compilation reports for RASMARK using information and figures provided by Mark and Debra RASMUSSON; and (3) preparing an annual financial review of RASMARK for the bank which holds the lien on one of RASMARK's jets. Mr. Apodaca said that in the annual financial review, which is signed by Mark and Debra RASMUSSON, they reported: no cash accepted, strictly check or credit cards. He went on to say that if there were cash transactions, they should have been reported to him and he would have known about it. According to Mr. Apodaca, prior to about August 23, 1990, he knew of no cash transactions received by RASMARK.Mr. Apodaca said that he was relatively familiar with RASMARK'S files and major accounts, AND that he had never heard of Jesus FLORES or VISTA REMODELING. He also said that prior to August 23, 1990, he had not heard of any missing account file. On about August 23, 1990, Mr. Apodaca went to RASMARK to gather information for the monthly report. At that time Debra RASMUSSON talked to Mr. Apodaca about cash transactions with no invoices and basically taking cash under the table. Mr. Apodaca said that this was the first time he had any knowledge of any cash transactions concerning RASMARK. Debra showed Mr. Apodaca a subpoena from the DEA and asked about writing off unpaid debts. Mr. Apodaca informed Debra that they could not write off a bad debt if they did not have any record of the transactions. Mr. Apodaca told Mr. Jensen about his conversation with Debra RASMUSSON, where they believed that she was talking about a relatively minor cash transaction, they decided to wait and hear more from the RASMUSSON later. Their next contact was with Mark RASMUSSON on August 27, 1990, when he came to their office (as detailed in paragraph 2 above).

4. In response to Subpoena #M7-90-525, Apodaca Jensen and Company provided the agents with copies of numerous documents regarding RASMARK JET CHARTER INC., Mark and Debra RASMUSSON, as follows:

a. Monthly compilation reports.

b. Financial information for financing proposal.

c. Bank statements and deposit records.

d. Ledger sheets.

e. Income tax statements.

f. Accounts payable and receivable information.

g. Investment reports.

h. Annual financial review.

The above listed items are herein submitted to the file. Analysis of the documents revealed that all deposits appeared to be checks (no cash deposits were found), primarily from major accounts, generally corporation. It should be noted that no record was found of Jesus FLORES or VISTA REMODELING.

[End of Excerpts]

[See TAOP at App. 159, ¶ 141; App. 917, ¶ 18, Frost's Affidavit]]

EXCERPTS FROM INTERVIEW OF
JERRY L. BURNETT AUGUST 26, 1990
DATE PREPARED: SEPTEMBER 7, 1990
DEA-6/FILE NO M7-90-Z002

DETAILS:

2. On August 26, 1990, at approximately 3:40 PM, Special Agent Steven E. Perkins and INS Special Agent Socorro G. Simmons met with and interviewed Jerry L. Burnett. Mr. Burnett is a pilot working for RASMARK JET CHARTER INC., which is owned and managed by Mark and Debra RASMUSSON. During the the interview, Mr. Burnett told the agents about flights he had flown for RASMARK, transporting Jesus FLORES and/or his people as follows:

A) El Paso, Texas, to Obregon, Mexico, on to Matamoros, Mexico, and back to El Paso, Texas, sometime in February of 1990.

B) El Paso, Texas, to Cancun, Mexico, and return to El Paso, Texas, in May of 1990.

C) El Paso, Texas, to Cancun, Mexico, and return to El Paso, Texas, in May of 1990.

D) El Paso, Texas, to Orlando, Florida, and return to El Paso, Texas, in June of 1990.

E) El Paso, Texas, to Orlando, Florida, the next day on to Miami, Florida, and return to El Paso, Texas, the next day, in June of 1990.

F) El Paso, Texas, to Baton Rouge, Louisiana, for refuel and on to Miami, Florida. The next day back to Baton Rouge, Louisiana, for refuel and back to El Paso, Texas, in June of 1990.

Mr. Burnett went on to say that he knew he had flown FLORES and his

people, for RASMARK, on other occasions and to other destinations. He remembered trips to other locations within the United States; however, he could not remember the details of the flights. Further, Mr. Burnett said that he knew that Jim Young, one of the other pilots for RASMARK, had flown FLORES and/or his people on several trips.

3. Mr. Burnett said that he first met Jesus FLORES in February of 1990 when he flew FLORES and three other passengers from El Paso, Texas, to Obregon, Mexico, for RASMARK. FLORES and the other passengers stayed at the airport in Obregon and after a while they were met there by approximately a dozen people. FLORES then told Mr. Burnett that he wanted Mr. Burnett to fly them to Matamoros, Mexico. Mr. Burnett told FLORES that he did not have the American or Mexican clearances for a trip from Obregon to Matamoros, Mexico. FLORES said that he would pay the mordida, arrange the catering and get the clearances necessary. Mr. Burnett stated that they left one of the original four passengers in Obregon, Mexico. FLORES, two of the other original passengers, and three new passengers got on the airplane and Mr. Burnett flew them to Matamoros, Mexico. According to Mr. Burnett, the three new passengers brought onboard four rfles and each was wearing a visible handgun on their side. Mr. Burnett said that the handguns had fancy grips and he thought that they were .45 caliber semiautomatic pistols. FLORES told Mr. Burnett that he was in the shrimp business and was making arrangements to import shrimp. According to Mr. Burnett, when the airplane landed in Matamoros, Mexico, it was met by several members of the Mexican Customs. When his passengers deplaned, they met, shook hands, and hugged the Mexican Customs officers. Mr. Burnett said that he believed that the three passengers he picked up in Obregon, Mexico, were Mexican law enforcement of some kind. After a while, FLORES and the other two original passengers got back on the airplane, with catering, and they flew back to El Paso, Texas.

4. Upon their arrival in El Paso, Texas, they were stopped and checked by U.S. Customs who detained them for about three hours. Mr. Burnett said that one of the items on the catering tray turned out to be sea turtle eggs, which are illegal to bring into the United States. (Note: U.S. Customs identified the three passengers as: Jesus A. FLORES,

Jesus MONCADA, and Juan Carlos LOZOYA.) Mr. Burnett said that from the peculiar events of this flight, the way that FLORES and the other passengers acted, and the way FLORES dealt with the Mexican and United States Customs, he knew that FLORES was in the illegal drug business. Mr. Burnett went on to say that after returning from this flight, he went to Mark and Debra RASMUSSON and asked who FLORES was and what he did. Through his conversation with the RASMUSSONs, they all concluded that FLORES was in the illegal drug business. Mr. Burnett said that from February through July of 1990, he had several conversations with the RASMUSSONs about FLORES and his people being in the drug business. Mr. Burnett said that both Mark and Debra RASMUSSON told him that they knew that FLORES and his people were in the drug business. The RASMUSSONs told Mr. Burnett that even though FLORES was a dope dealer, they would fly him wherever he wanted to go, just be careful not to haul illegal drugs.

5. When asked about other trips he had flown for RASMARK that Jesus FLORES had chartered, Mr. Burnett said that some time in May of 1990, he as pilot, and Mark McCallister as co-pilot, flew a man and wife to Cancun, Mexico. The man was one of the two passengers who had returned from Matamoros, Mexico, with FLORES on the trip detailed above. Mr. Burnett said they dropped off the couple in Cancun and flew back to El Paso with no passengers. Approximately one week later, he flew to Cancun with the same co-pilot, picked up the same couple and flew them to Ciudad Juarez, Mexico. Mr. Burnett said that the couple had substantial baggage. He went on to say that he could recognize the male passenger if he saw him again. According to Mr. Burnett, he saw the same male with FLORES when FLORES was making arrangements for the Florida trips and on a few other occasions. When asked why Mark and Debra RASMUSSON had not mentioned these trips, Mr. Burnett said that these trips were made in violation of FAA regulations. He went on to say that the RASMUSSONs would not want anyone to know about these trips and that he thought the trips were made in jet 7GP.

6. Regarding three Florida trips that FLORES chartered, Mr. Burnett said that the first trip was scheduled for two jets to take 12 to 15

people to Orlando, Florida. The flights were chartered by Jesus FLORES and the arrangements were made by David Chavez through Debra and Mark RASMUSSON who were in Vail, Colorado, at the time. Mr. Burnett was flying the RASMARK jets for FLORES and not for RASMARK because he had quit RASMARK over an argument with the RASMUSSONs about flights not complying with FAA regulations. Mr. Burnett and co-pilot Pat Moulsh were to fly 821AW and pilot Jim Young and another co-pilot were to fly the rest of the passengers in another RASMARK jet. Mr. Burnett said that he heard later that the second jet scheduled for that day was canceled, and Mr. Young did not fly to Orlando. Mr. Burnett spoke briefly with FLORES prior to departing on the first trip, and it was agreed that FLORES would pay Mr. Burnett $300.00 for flying the trip. Mr. Burnett told FLORES that 12 to 15 passengers was too many for one jet, so they would have to split the passengers up and take two jets. According to Mr. Burnett, FLORES was at RASMARK with Arturo BERMUDEZ and one of the people he had transported with FLORES on the Obregon/Matamoros trip (as detailed in paragraph 3 of this report).

7. Mr. Burnett said on the first trip to Florida he transported Joe PEAKE and seven other passengers from El Paso, Texas, to Orlando Executive Airport. The flight left El Paso at approximately 6:00 PM on a Saturday in June of 1990 and took about three hours, in RASMARK Lear Jet 821AW. According to Mr. Burnett, he left all of the passengers at the Orlando Executive Airport, refueled the airplan, and returned to El Paso with no passengers. During the flight to Florida, Joe PEAKE showed great concern over the possibility of landing at an International Airport. PEAKE conversed with the other passengers and wanted to land at a smaller public airport where thre were no U.S. Customs or Immigration inspectors or agents. Mr. Burnett said that PEAKE appeared to be taking care of the other passengers. Mr. Burnett got the impression that the passengers, other than PEAKE were from Colombia. According to Mr. Burnett, the other passengers all spoke Spanish; however, not border Spanish. During the flight, the passengers wanted to listen to a radio station from Colombia and one of the passengers listed to the radio station's name announcement and verified that it was from Bogota, Colombia. Mr. Burnett got the impression that at least one of the passengers was from Bogota, Colombia. Mr. Burnett went

on to say that he thought that his passengers were Colombian illegal drug load drivers who were getting out of town, to return to Colombia, and who did not want to encounter U.S. Customs or Immigration officials.

8. The next day Mr. Burnett flew the same jet, with the same co-pilot, from El Paso to Orlando Executive Airport for Jesus FLORES. Mr. Burnett said that while he was preparing the jet for the trip, he spoke with FLORES who was accompanied by Arturo BERMUDEZ and the same other individual that he recognized from the previous trip. FLORES told Mr. Burnett that this would be same type flight as before, and that Joe PEAKE would meet him at the airport when he landed. Mr. Burnett said that when the passengers arrived, six Hispanic males, each with an overnight bag, walked directly to and got into the RASMARK chartered jet. According to Mr. Burnett, it was a hot day and it was even hotter inside the jet. He told the passengers that the flight would not be departing for 10 or 15 minutes and that the passengers could wait in the airplane hangar or office area where it was cooler if they wanted. All of the passengers chose to wait inside the jet. Mr. Burnett said that he thought said that he thought the passengers were illegal drug load drivers and that they wanted to stay inside the jet so they would not be seen. According to Mr. Burnett, he took off at approximately 6:00 PM and flew the passengers direct from El Paso to Orlando Executive Airport in Florida.

9. Upon their arrival at the Orlando Executive Airport, Joe PEAKE met the flight and greeted the passengers as they got off the airplane. It was obvious to Mr. Burnett that PEAKE and the passengers knew each other. At Joe PEAKE's request, Mr. Burnett and his co-pilot agreed to stay overnight in Orlando so they could fly the two loads of passengers to Miami, Florida, the next day. While the pilots serviced the jets, PEAKE took the passengers in taxicabs to a hotel. PEAKE returned to the airport and took the pilots the hotel and checked them in, paying cash. The next morning, during a casual conversation, PEAKE asked Mr. Burnett if he would fly them to Colombia. Mr. Burnett said no. PEAKE told Mr. Burnett that he had taken the first load of passengers to the first load of passengers to Disney World and to MGM Studios. The next morning, during breakfast, PEAKE had several

conversations with the other passengers concerning how they wanted to get to Miami. Mr. Burnett said that the passengers could not make up their minds; however, PEAKE said that they did not want to fly into Miami International Airport and wanted to avoid contact with U.S. Customs and Immigration. Eventually a decision was made and PEAKE told Mr. Burnett that they were going to fly one load of people from Orlando to Tamiami Airport which located just outside of Miami, Florida. Mr. Burnett was told they would just fly the one trip and the first group of passengers would make other arrangements for going to Miami. Mr. Burnett said that they then returned to the Orlando Executive Airport and he flew the second load of passengers, with Joe PEAKE to the Tamiami Airport, arriving at approximately midday.

10 According to Mr. Burnett, after landing at Tamiami Airport, Joe PEAKE went with with the passengers, in the airport's Suburban driven by a female, to a hotel. The pilots remained with the jet at the airport until the Suburban brought Joe PEAKE back. They then flew Joe PEAKE, as the sole passenger, back to El Paso, Texas, arriving at approximately 2:00 PM. PEAKE told Mr. Burnett that he did not understand why the group decided to fly half of them to Miami and the other half went to Miami another way. PEAKE said that they were a bunch of wimps who could not make up their minds and that they would have been lost without him. PEAKE also told Mr. Burnett that the entire group was going to take commercial flight from Miami, Florida, to Colombia. PEAKE told Mr. Burnett that he wanted to return to El Paso that day, and that tomorrow he would be chartering another RASMARK jet to fly some more people to the same airport in Florida.

11. Regarding the third trip to Florida, Mr. Burnett said that Mark and Debra RASMUSSON were back from Vail, Colorado, and he received a call to fly a Jesus FLORES charter from El Paso, Texas, to Tamiami, Florida, that Tuesday afternoon. He was notified that he would be transporting Joe PEAKE and some other passengers. According to Mr. Burnett, he, with the same co-pilots from the two previous Florida flights, flew three passengers from El Paso to Tamiami in RASMARK's Lear 24, tail number N44CP, and that he remembered Jesus FLORES at RASMARK to see the flight off. Mr. Burnett said that the three passengers were (1) Joe PEAKE; (2) a young Hispanic male with a

portable CD player; and (3) a Hispanic male in his mid-twenties, about 6' tall, 180 pounds, wearing a Polo shirt and carrying one bag. Mr. Burnett went on to say that it appeared to him that the passenger in the Polo whirt was not one of FLORES' "regular boys" but was rather another of the individuals who was with the two groups that he had previously transported. Mr. Burnett said that according to his co-pilot, the passenger in the Polo shirt on this flight listened to the Bogota, Colombia, radio station. Mr. Burnett stayed away from asking direct pointed questions to PEAKE or the third passengers because he believed that away from asking direct pointed questions to PEAKE or the third passenger because he believed that he was transporting Colombian illegal drug transporters. Mr. Burnett flew the passengers from El Paso to Baton Rouge, Louisiana, refueled, and then flew from Baton Rouge to Tamiami Airport in Florida.

12. They landed after normal flight hours at Tamiami Airport, and one of the passengers called for a taxi. Because the airport was closed, airport security found them and took them to the main gate to meet the taxi. The passengers and pilots took the taxi to the Wilshire Hotel which is located near the airport. Mr. Burnett said that they all went into the Wilshire to get rooms. Upon finding out that the Wilshire was sold out, Joe PEAKE went upstairs to talk to some people; everyone else remained in the hotel lobby. A short time later, PEAKE returned to the lobby with one of the passengers from the previous trip. The pilots, PEAKE, and the young Hispanic male got back into a taxi and went to the Marriott Hotel. According to Mr. Burnett, they left the Hispanic male in the Polo shirt at the Wilshire Hotel. Mr. Burnett, they left the Hispanic male in the Polo shirt at the Wilshire Hotel. At the Mariott Hotel, Joe PEAKE arranged for the rooms and paid the hotel in cash. Mr. Burnett said that he and his co-pilot stayed in one room, and PEAKE and the young Hispanic male with PEAKE's portable CD player, stayed in the room across the hall. (Note: Mr. Burnett was somewhat unsure if they dropped off the third passenger that night or the next morning; and if PEAKE stayed in his hotel room with the Polo shirt passenger or the young Hispanic male.)

13. Mr. Burnett said that the next morning they all took a taxi from the Marriott Hotel to the Wilshire Hotrel and waited in the lobby

while Joe PEAKE went upstairs to talk to some people. Mr. Burnett believed that all of the other passengers from all three of the Florida flights were in the Wilshire Hotel. After approximately 15 to 30 minutes, PEAKE returned and, at PEAKE's instruction, the pilots, PEAKE, and the young male walked to a nearby mall. Mr. Burnett said that they wasted said that they wasted approximately two hours walking around the mall. According to Mr. Burnett, they were just killing time, just waiting for the two hours to pass before PEAKE returned to the hotel. During the two hours, PEAKE bragged about having a lot of money and being able to do or get anything he wanted in El Paso as long as he had a lot of money. Mr. Burnett said that PEAKE bought him a shirt while they were at the mall. After two hours, they walked back to the Wilshire Hotel and PEAKE went inside, again to talk to some people. Approximately 10 to 15 minutes later, PEAKE returned and they took a taxi to a nearby barbecue restaurant to eat. They called the airport van which took them back to the airport. At the airport, at PEAKE's request, Mr. Burnett called ahead for catering and they flew to Baton Rouge to refuel. At the Baton Rouge Airport, they picked up the catering (a $47.00 shrimp plate) and Mr. Burnett called Debra RASMUSSON and had her call Jesus FLORES and tell him when PEAKE was going to arrive in El Paso so FLORES could have someone pick PEAKE up.

14. Mr. Burnett said that after PEAKE returned from the Wilshire Hotel the last time, there was a definite change. Joe PEAKE was relaxed, he was done with what he was doing, his job was done. According to Mr. Burnett, PEAKE was done with his job and all the previous passengers that they left in Florida were flying to Colombia. Mr. Burnett said that when they landed in El Paso, he saw that the FAA inspectors were at RASMARK. Mr. Burnett told PEAKE and the young male to get out of the airplane and he dealt with the FAA inspectors.

15. Mr. Burnett said that sometime after the Florida trips, Mark RASMUSSON had told him that the passengers they had taken to Florida for Jessie FLORES were involved in the cocaine bust made by Mexican Federal Police in Villa Ahumada, Mexico. Mark RASMUSSON told Burnett that the passengers had been the pilots of the planes intercepted by Mexican Federal Police. *(On June 7, 1990,

four airplanes were seized after landing on a clandestine airstrip near Villa Ahumada, Chihuahua, Mexico, when approximately 2500 kilograms of cocaine was seized).

16. Near the end of the interview, Mr. Burnett said that Mark and Debra RASMUSSON were not being truthful with the agents, He said that the RASMUSSONs were scared to death that the truth would come out including IRS and FAA violations. According to Mr. Burnett, the RASMUSSONs knew that Jesus FLORES was an illegal drug trafficker. Further, where FLORES was paying in cash and the cash could not be traced to the RASMUSSONs, they were taking the cash under the table and not claiming the money on their taxes or on their business records. Mr. Burnett said that the RASMUSSONs did not keep any records of the flights they made or arranged for Jesus FLORES and that he did know exactly how much money the RASMUSSONs had pocketed from FLORES; however, he knew it was in excess of $50,000.00. He further stated that the RASMUSSONs had not filed the IRS reports when they received in excess of $10,000.00 cash from FLORES. Mr. Burnett also said that several of the flights that the RASMUSSONs had made for FLORES were in violation of FAA regulations. The FAA violations inclujded improper Class 91 and Class 135 flights, records of flight not kept, and extended over fuel capacity flights (i.e., Cancun trips). According to Mr. Burnett, if the RASMUSSONs were guaranteed that they would not be prosecuted by any of the Federal agencies, they would probably tell the agents everything they could about Jesus FLORES and his people.

[End of Excerpts]

[See App. 344: Chavez's Affidavit]

EXCERPTS FROM DEA INTERVIEW OF DAVID CHAVEZ ON AUGUST 27, 1990 DATE PREPARED: SEPTEMBER 1, 1990 DEA-6/FILE NO M7-90-Z002

1. On August 27, 1990, Special Agent Steven E. Perkins and DEA Intelligence Analyst Elias Chavez asked for and were granted permission by Mark RASMUSSON of RASMARK JET CHARTER, INC., to interview RASMARK salesman David Chavez. On that same date at approximately 2:30 PM, the gents met with and interviewed Mr. Chavez at the Village Inn located at Airway and Montana Avenue in El Paso, Texas.

2. In response to the agents questions, Mr. Chavez said that he first met Jesus FLORES (AKA: Jesse) in March or April of 1990 at RASMARK JET CHARTER INC., when Jesse would come in to talk with Mark and Debra RASMUSSON. Mr. Chavez has the telephones forwarded to his telephone on weekends and handles the weekend flights. Mr. Chavez said that during his normal course of employment he would: (1) line up new accounts; (2) service existing accounts when they needed weekend flights; (3) quote flight rates; (4) make out flight information sheets and rate information sheets for future invoicing; (5) arrange airplanes, pilots and, on occasions, catering for flights; and (6) make bank deposits at El Paso National Bank for RASMARK JET CHARTER INC. Mr. Chavez went on to say that normally he handled cargo flights; however, passenger flights were secured by credit card or check prior to departure unless it was a charter for one of their major accounts, and a price was always quoted prior to the flights. Mr. Chavez said that the price quote range was as follows:

Cargo flight - $2.45 - $2.55 per mile.
Ambulance flights - $2.60 per mile.
Passenger flights - $2.35 - $2.50 per mile.

Mr. Chavez also said that all of the bank deposits he made were checks

and that he has never deposited cash for RASMARK. Further, he did not know of any cash deposits made by RASMARK.

3. In regard to Jesus FLORES, Mr. Chavez said that FLORES was a special account with Mark and Debra RASMUSSON and that they generally handled FLORES' flights. Mr. Chavez said that he was told by Mark and Debra RASMUSSON (1) to arrange flights for FLORES whenever he wanted to go; (2) do not quote Jesus FLORES prices; (3) FLORES did not need any form of payment (i.e., credit card or check prior to departure); (4) Mark and Debra RASMUSSON would arrange FLORES payments with him later themselves; and (5) make sure on FLORES flights that they just took passengers, not cargo or anything, and that the passengers did not take a lot of boxes or bags. Mr. Chavez went on to say, referencing passenger flights, that here on the border it was always wise to make sure that passengers did not take a lot of boxes or bags to ensure that they were not hauling contraband. Mr. Chavez said that he got to know Jesus FLORES on a friendly but casual basis and would have short conversations with him when Jesse would come in to see Mark and Debra or when Jesse would call in to talk to Mark and Debra, and Mr. Chavez would answer the telephone.

4. Mr. Chavez told the agents that he was working on the weekend of June 9, 1990, when Jesus FLORES called in for some passenger flights from El Paso to Orlando or Miami, Florida. Mr. Chavez said that he called Mark and Debra RASMUSSON in Vail, Colorado, at telephone number (303) 926-3229, and told Debra about FLORES' call. Mr. Chavez said that FLORES wanted two trips to Florida that weekend and that he gave out telephone numbers to Jesse and Debra so they could talk together about the trips. Mr. Chavez said that he was called by Debra, after she had spoken with FLORES, and was told to arrange the airplane and catering for FLORES' flights and that Jerry Burnett would fly the trip. Debra also told Mr. Chavez that she would take care of the trip sheets and paperwork and she would work out the payment for the flights with FLORES later. Mr. Chavez went on to say that FLORES wanted two jets that Saturday, but only ended up using one of the jets. He said that the second jet with FLORES' passengers left the next day, on Sunday, with Mr. Bernett as the pilot on both trips.

5. Mr. Chavez identified Jesus FLORES from some photographs that the agents had, and identified a picture of Arturo BERMUDEZ (AKA: Francisco I. OBREGON-Sosa) as a person that he had seen with FLORES at RASMARK on a few occasions. Mr. Chavez said that both FLORES and BERMUDEZ were at RASMARK just prior to the Saturday and Sunday flights departing to Florida. Mr. Chavez also said that the RASMUSSON had shown him a newspaper clipping, with Jesus FLORES named in a cocaine bust, saying "look who got busted." Mr. Chavez said that the RASMUSSONs did not say anything about a missing client folder or about Jesus FLORES owing them any money. According to Mr. Chavez, FLORES must have been paid up or the RASMUSSONs would not have continued to fly him around. Mr. Chavez again said that the RASMUSSONs had never mentioned anything about a missing client folder or about FLORES owing them any money. According to Mr. Chavez, if FLORES was chartering $40,000.00 a month in flights, he would be one of RASMARK's largest accounts. When asked about other flights that FLORES had chartered, Mr. Chavez said that he thought that he had heard of flights to Los Angeles, California, and Portland, Oregon, before but he could not remember for sure.

6. At the end of the interview. Mr. Chavez gave the agents his telephone number, (915) 857-0370, and his beeper number, (915) 549-1057, and said that the agents could contact him if they had any further questions.

[End of Excerpts]

EXCERPTS FROM INTERVIEW OF DEBRA RASMUSSON AND PILOT JIM YOUNG AUGUST 27, 1990 DATE PREPARED: SEPTEMBER 15, 1990 DEA-6/FILE NO M7-90-Z002

DETAILS;

1. Reference is made to all DEA-6's under this case file title and number as they relate to RASMARK JET CHARTER INC., Mark and Debra RASMUSSON, and jet charter flights taken by members of the FLORES organization.

2. On August 27, 1990, at approximately noon, Special Agent Steven E. Perkins and DEA Intelligence Analyst Elias Chavez went to RASMARK JET CHARTER INC., located at 6825 Convair Road, El Paso, Texas, and interviewed Debra RASMUSSON and RASMARK pilot Young. In response to the agents' questions about Arturo BERMUDEZ and his business, Golden Eagle Enterprises, Debra said that in mid-1989, BERMUDEZ arranged with RASMARK to fly 1,000 pounds of money or gold from El Paso, Texas, to Zurich, Switzerland. She said that RASMARK made the arrangements, at some expense to RASMARK; however, the flight never took place. According to Debra, BERMUDEZ wanted to arrange two or three of these flights if everything went all right on the first trip. Both Debra and Mr. Young identified a photograph as Arturo BERMUDEZ and both stated that they had seen BERMUDEZ with Jesus FLORES on previous occasions. Debra said that she would try to provide the agents with copies of documents regarding RASMARK's preparation for the Switzerland flight. She also said that she remembered the flight because it was going to be approximately a $40,000.00 charter to a country they had not flown to before. She also remembered that BERMUDEZ spoke English and that the flight did not take place because BERMUDEZ was originally going to pay in advance and later changed his mind and wanted to pay when they arrived in Switzerland.

3. Debra RASMUSSON introduced Mr. Jim Young to the agents as one of RASMARK's pilots , and said that Mr. Young might be able to give the agents details concerning some of FLORES' flights. Debra said that because the Jesus FLORES/VISTA REMODELING file was missing, maybe the pilot could remember flights that she had not told the agents about. In response to the agents' questions, Mr. Young told the agents about the following flights:

a. RASMARK FLIGHT: El Paso, Texas, to Lindburg Field, San Diego, California, and return that same day, on April 10, 1990.

Passengers: Three or four male passengers including: Jesus FLORES, Arturo BERMUDEZ, and one other passenger that he would recognize because he later flew him to Detroit, Michigan.

Details: Was originally supposed to stay in San Diego for two hours, ended up staying in San
Diego for four or five hours. Passenger did not stay at airport and would call Mr. Young at the airport from what he believed were different locations. Passengers picked up at airport by other Hispanic males.

b. RASMARK FLIGHT: El paso, Texas, Texas, to Cancun and Cozumel, Mexico, and return to El Paso, Texas.

Passengers: Five or six passengers, one of whom was Jesus FLORES.

c. RASMARK FLIGHT: El Paso, Texas, to Detroit, Michigan, on April 3, 1990, with a stop to refuel in Fort Wayne, Indiana. Layover and return to El Paso on April 4, 1990.

Passengers: Four passengers consisting of two male/female couples. Left one of the couples in Detroit, Michigan. The chubby Hispanic male from the couple who went to and returned with the flight from Detroit, was the same other passenger as detailed in paragraph a above.

Details: The couples had baggage and Mr. Young thought that

they must have secured the flight with a credit card.

d. RASMARK FLIGHT: El Paso, Texas, to Culiacan, Mexico, stayed for two to three hours, and returned to El Paso, Texas.

Passengers: Three or four passengers, one of whom was Jesus FLORES.

Details: While in Culiacan, Mexico, Mr. Young ate lunch with Jesus FLORES. While in a car with FLORES, FLORES pointed out some buildings and said that they belonged to him. Mr. Young said that he left most of the passengers in Culiacan, Mexico.

e. RASMARK FLIGHT: El Paso, Texas, to Portland, Oregon, and return to El Paso, Texas, with a refuel in Salt Lake City, Utah.

Passengers: Transported a husband, wife, and child; left them in Portland, Oregon, and returned with no passengers.

Details: Mr. Young said that he knew that Jesus FLORES paid for this flight.

f. RASMARK FLIGHT: El Paso, Texas to Portland, Oregon, and return to El Paso, Texas.

Passengers: Mr. Young said that he could not remember the number of passengers; however, he thought Jesus FLORES was on the flight.

4. Mr. Young said that he thought that he had flown some of FLORES' people on another flight to Detroit, Michigan, but he could not remember the details. Mr. Young went on to say that he believed that he had flown FLORES and his people on other RASMARK charters; however, he could not remember when or to where. Mr. Young said that where he did not get involved in the billing, he may have flown FLORES' people on several other flights that FLORES paid for, he had no way of knowing. He told the agents about the flights that FLORES was on or that he recognized FLORES' people on. Mr. Young

said that on June 9, 1990, he was going to fly a FLORES charter from El Paso, Texas, to Florida, but the flight got canceled after Jerry Burnett flew out the first load of passengers. On the day the flight got canceled, Mr. Young remebered Jesus FLORES, Arturo BERMUDEZ and the chubby Hispanic male from the flights detailed in paragraphs a and c above, at RASMARK arranging the Florida trips. Mr. Young also said that FLORES once told him that FLORES was going to buy a Lear jet that could stay in the air for five or six hours at a time. According to Mr. Young, he saw Arturo BERMUDEZ in the Popular Store at the Mall and BERMUDEZ told him that BERMUDEZ had purchased a Lear 25.

5. After Mr. Young left the office, Debra RASMUSSON said that she did not like to tell the pilots how much the flights cost and too much about major customers because the pilots might want more money for the flights, and the pilots were always looking for easier jobs like being a personal private pilot for a company that had its own jet. Debra said that she did not know about most of the flights that Mr. Young told the agents about and that is why she had not told the gents about the flights before. When asked how she could not know about the flights where she was the manager and took care of the files, Debra said that where FLORES always paid in cash it would not surprise her if some of RASMARK's employees had taken FLORES on flights and not told her about it. Debra said that she had fired her former secretary for stealing on July 16, 1990. According to Debra, her former stole $400.00 from her purse while they were out dancing one night. At the agents request, Debra showed the agents the secretary's personnel folder which revealed: Susana Zaldivar, 270 Padres Avenue, El Paso, Texas 79907, telephone number (915) 858-4573.

[End of Excerpts]

[See App. 917, ¶ 17, Frost's Affidavit]

EXCERPTS FROM INTERVIEW OF FORMER RASMARK OFFICE MANAGER AUGUST 27, 1990 DATE PREPARED: SEPTEMBER 15, 1990 DEA-6/FILE NO M7-90-Z002

"2. On August 27, 1990, at approximately 7:00 PM, Special Agent Steven E. Perkins and DEA Intelligence Analyst Elias Chavez interviewed Susana Zaldivar, the former office manager/secretary for RASMARK JET CHARTER INC., at Denny's Restaurant located at Lomaland and Gateway West in El Paso, Texas. Susana was accompanied by her husband and the meeting was arranged through telephone contact with Susana at El Paso telephone number (915) 858-4573 which services her residence located at 270 Piedras Avenue, El Paso, Texas.

3. Susana told the agents that she graduated from business school and started working for Mark and Debra RASMUSSON, at RASMARK JET CHARTER INC., on about May 7, 1990. Susana said that she worked for the RASMUSSONs for two and one half months, until about July 21, 1990. According to Susana, on a Friday Debra told her that she was not finishing her work and that Debra received complaints from customers about Susana not knowing what she was doing. The next Monday, Debra fired Susana. Susana stated that Debra's allegations were wrong and that she did not understand why Debra fired her. When the agents informed Susana that Debra said that Susana had taken money from her, Susana said that she had never taken (stolen) any money from Mark or Debra RASMUSSON or their business.

4. In response to the agents' questions, Susana said that when she worked at RASMARK she was responsible for the office (i.e., office manager) and her job entailed the following:

a. In charge of the office when Debra and Mark were not there.

b. Answering the telephones, sometimes even on weekends through Call Forwarding, and taking messages. quoting prices, checking airplane and pilot availability and preparing trip sheets.

d. Typing all invoices, mailing the customer copy of the invoices, filing the invoices.

e. Receiving the mail and processing the check received for deposit.

f. Doing the filing, typing, and receivables.

g . Call customers who had not paid their bill after 30 days and made arrangements for payment.

h. Logging in and filing expenses.

Susana said that she did all of the invoicing and a majority of the filing at RASMARK for the months of May, June, and July of 1990. Susana also said that she never did an invoice for Jesus FLORES or VISTA REMODELING.

5. When asked about missing files, Susana said that if a file were missing, she would be the first person Debra or Mark would ask about it. According to Susana, if there had been a missing file, she would have known about it, and she never heard about any missing file. Susana said that most of the payments received by RASMARK for chartered jet flights were checks, and Mark RASMASSON or Dave Chavez would generally deposit the check the day they were received. She further stated that she only remembered receiving a cash payment one time and that was a $200.00 adjustment on a bill. Susana said that she had never heard anything about FLORES owing RASMARK any money or about FLORES not paying an invoice (bill) owed to RASMARK.

6. In response to the agents' questions, Susana said that she was told that FLORES was a special account and that Debra and Mark would handle all of his billing. Normally when a customer would call

in to charter a flight, she would take the call, start the trip sheet, quote the price, and begin making the arrangements. However, Susana was told that when Jesus FLORES or any of his people called, the call was to be transferred to Mark or Debra RASMUSSON. Susana was told by Debra and Mark that if FLORES or his people wanted to charter a flight, and they were out of town, to take them when and where they wanted to go, and that Debra and Mark would handle the paperwork and billing themselves when they got back. On one occasion, Susana remebered asking Debra if she should invoice a flight that had just been taken by FLORES. Debra told Susana no, that Debra would handle it. According to Susana, Jesus FLORES, Joe PEAKE, and Peter SEAVERNS were treated special, like good friends with Debra and Mark; with all of their other customers, it was all business.

7. Froma series of phtographs that the agents showed Susana, she identified photographs of Jesus FLORES and Joe PEAKE by name, and a photograph of Arturo BERMUDEZ as a person she had seen with FLORES at RASMARK before. Susana said that PEAKE had a funny smile and laugh and he always wore expensive jewelry. Because of the way PEAKE acted and the jewelry he wore, Susana felt that PEAKE was an illegal drug dealer who had a lot of money.

8. According to Susana, most of the flights chartered at RASMARK were cargo and air ambulance flights which were always paid for by check. Ford was RASMARK's biggest customer.
During her employment at RASMARK, they made about eight flights per week and she only remebered invoicing about 10 passenger flights. She said that RASMARK did relatively few passenger flights.

9. Regarding flights tha FLORES chartered, Susana remembered two flights to Portland, Oregon, and two flights to Florida. Susana said that the flights to Florida were on a weekend and she took the original call to set up the flights. Because Susana knew that FLORES was a preferred customer of the RASMUSSONs, she transferred the call to Dave Chavez to make the arrangements. Generally, Mr. Chavez or Mark would dispatch the flights.

10. Susana said that Debra told her about Jesus FLORES being

arrested before the article came out in the newspaper. Mark told Susana that FLORES owned the airplanes seized in Mexico. Debra told Susana that they had only chartered flights for FLORES on two or three occasions and that FLORES did not owe them any money. Debra also told Susana that FLORES was a cash customer. Susana was told that FLORES preferred pilot Jerry Burnett to fly his charters. Debra told Susana that some of the people they had transported for FLORES were probably FLORES' pilots. This statement was made referencing the cocaine and airplanes seized in Mexico with FLORES named in the newspaper article. According to Susana, Mark flew a load of Mexican Federal Police, who were involved in the bust in Villa Ahumada, Mexico, from Ciudad Juarez to Monterrey, Mexico. Susana offered to invoice the flight to Monterrey, Mexico, but Debra said that she would take care of it. Susana helped Mark negotiate with the Mexican Police for the payment on the Monterrey flight. Mark received payment for the flight and gave Susana a $50.00 bonus for her help (Note: According to Mark RASMUSSON, he received payment for this flight through Western Union.). According to Susana, Mark told her, "Remember the Mexican Police that we flew to Monterrey, Mexico, because they had just busted a large load of cocaine in some airplanes? The airplanes belonged to Jesus FLORES." Debra told Susana that some of the people they flew for FLORES wanted to be flown to Colombia. FLORES was arrested with Colombian cocaine. The people they flew for Jesus FLORES were FLORES' pilots.

11. Susana told the agents that Albert Apodaca was the CPA who handled RASMARK's books. She said that Mr. Adpodaca would come in once a month to gather deposit and account information. Susana said that Mr. Apodaca was familiar with the files and would know about cash deposits and customer files. Susana also said that there was a deposit ledger, which she described for the agents, and said that it was in the top drawer of the filing cabinet. Susana said that the RASMJUSSONs had houses in Colorado and in San Jose Del Cabro, Mexico. She remembered Peter SEAVERNS, Joe PEAKE, and another Hispanic male went on a flight with Mark to go fishing. She also said that any trips to Mexico had to be reported to a Mr. Dominguez in Mexico City, Mexico.
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JUNE 10, 1991, THROUGH JUNE 17, 1991

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(Witness steps down.)

THE COURT: Please call your next witness.

MR. GREENBERG: Virginia Moreo.

THE COURT: Have you taken the oath, ma'am?

MS. MOREO: No, sir.

(Court swears in the witness.)

VIRGINIA MOREO, GOVERNMENT'S WITNESS, SWORN

DIRECT EXAMINATION

BY MR. GREENBERG:

Q Please tell us your whole and complete name, ma'am.

A Virginia Dominguez-Moreo.

Q And how do you spell Dominguez?

A D-o-m-i-n-g-u-e-z.

Q And where to you work, ma'am?

A At the Rodeway Inn, Ontario.

Q And how long have you worked there?

A Going on three years.

Q And what do your duties consist of at the Rodeway Inn?

A I'm the manager there.

Q And how long have you been the manager?

A For about a year and a half.

Q I assume.when somebody comes to register at the Rodeway

Inn, there is a record filled out showing his registration?

A Yes, there is.

MR. GREENBERG: May I approach, Your Honor?

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THE COURT: Yes.

Q (By Mr. Greenberg) I show you what has been marked as

19-A. Can you identify what 19-A is?

A Yes.

Q What is 19-A, ma'am?

A 19-A, it's the registration when they come in and register for a room, and it has their signature and everything on it.

THE COURT: I'm sorry. I can't hear you when you turn your head like that.

THE WITNESS: Oh, I'm sorry.. It's a record of the registration when a person comes in to register in the room, and he has to fill it out and sign it.

Q (By Mr. Greenberg) And is this the registration for your hotel?

A Yes, it is.

Q And what room does it show Mr. Dodd registered in?

MR. DEGUERIN: Excuse me, Judge. The exhibit has not been offered yet. I object that any content being testified about being offered is already admitted.

THE COURT: Well, she can interpret her own

record. He just asked her what room it shows. If you can tell.

THE WITNESS: The first one is 204.

Q (By Mr. Greenberg) And I want to show you 19-B.

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[Can] you identify what 19-B is?

A Yes. That's the record that we keep in our files showing every day, how long he stays there, the days he comes in and pays.

THE COURT: We can't hear you.

THE WITNESS: When he comes in and pays, that's the daily record that we kept on this one.

Q (By Mr. Greenberg) All right. And how did Mr. Dodd pay?

A Every day, cash.

Q 19-C?

A That's our computer record that comes out of the computer that we keep daily, and we record the charges on

there every day.

Q All right. Now, when did Mr. Dodd register at your hotel?

A In November, the 10th of November.

Q Of what year?

A 1990, I believe. I'm sorry, that was 1989, 11/10.

Q What happened to -- does your hotel keep copies of the phone tolls that people call from the room?

A Yes, we do.

Q And how long are those kept for?

A We try to keep them for at least a year.

Q And have you looked for the phone calls attached to Mr.

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Dodd's room?

A I did, but they were already destroyed.

Q I'm going to show you some xeroxes, ma'am, and ask you if you can identify these, which are marked 21-A?

A Yes.

Q And you have previously seen these?

A Yes, I have. Those were the ones that were given to the policemen when they asked for them.

Q okay. Are they true copies of the phone tolls that were from Mr. Dodd's room that day?

A Yes, they are.

Q And the records show Mr. Dodd moved from room to room several times?

A Right.

Q That's the way they are printed up in the hotel?

A Yes, they are, only there is a long sheet.

MR. GREENBERG: Your Honor, I would like to offer 19-A, B and C and 21-A.

THE COURT: Show them to counsel, please.

MR. DEGUERIN: Objection, hearsay. I'm sorry, Your Honor, I didn't hear you.

THE COURT: I said, "Show them to counsel." I

didn't know if you'd seen them.

MR. DEGUERIN: Your Honor, hearsay and the proper predicate has not been laid.

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MR. GREENBERG: I call Jackie Fuller.

THE COURT: Is this one of the witnesses who have taken the oath?

MR. GREENBERG: No, Your Honor.

(Court swears in the witness.)

JACKIE FULLER, GOVERNMENT'S WITNESS, SWORN

DIRECT EXAMINATION

BY MR. GREENBERG:

Q Please tell the Court and ladies and gentlemen of the jury your whole and complete name.

A Jackie Fuller with Contel Cellular out of Atlanta.

Q And what kind of company is Contel Cellular?

A We handle cellular telephones, mobile telephones for

cars.

Q okay. And how long have you been employed with Contel

Cellular Telephone?

A A little over two years.

Q And what position do you occupy there?

A Custodian of records.

Q Miss Fuller, did you conduct any searches to find out any phone numbers under the names listed of Luis Garcia?

A Yes, I did.

Q Vista Remodeling?

A Yes, sir.

Q What other names in this case have you conducted

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searches of?

A I believe it was Roach.

Q Rocha?

A Rocha, and Donalto -- I don't speak Spanish, so

Q Donato Malverde?

A Yes, sir.

Q And how did you come to the information under what names to conduct names to conduct searches under of the phones?

A I was sent a subpoena from Agent Lenox to conduct a key-name search on certain names and cellular telephone numbers.

Q okay. And when you say you conduct a key-name search, how is it -- Contel is a nationwide company, correct?

A Yes, sir.

Q And provides, cellular telephone service across the country, correct?

A Yes, sir.

Q How is it that a key-name search would help you determine who has a subscribership to a particular phone or phone number?

A You put in the person's name, their last name that you're looking for, and it pulls up through the computer through our database, all of the names that are listed for

that person and their mobile numbers.

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MR. ABOUD: No questions.

MR. GREENBERG: One moment please, Your Honor.

REDIRECTEXAMINATION

BY MR. GREENBERG:

Q In regard to Government's Exhibit 65, which has a Plaintiff's exhibit sticker on it, Number 65, whose signature is at the bottom signing the contracts for those beepers?

A Jesus Flores

MR. GREENBERG: Thank you.

THE COURT: Is that it for th is witness?

MR. GREENBERG: Yes, sir.

.THE COURT: You may step down.

(Witness steps down.)

THE COURT: Next?

MR. HERMOSILLO: Hooker.

(Court swears in the witness.)

ROBERT M. HOOKER, GOVERNMENT'S WITNESS, SWORN

DIRECT EXAMINATION

BY MR. HERMOSILLO:

Q Would you please state your full name for the record, sir?

A Robert M. Hooker, Jr.

Q Mr. Hooker, could you speak up just a little bit louder?

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A Robert M. Hooker, Jr.

Q How are you employed, Mr. Hooker?

A I was working for Easy Living.

Q Are you still working for them now?

A No.

Q Back in May of 1990, though, you were working for Easy LIving [sic]?

A Yes.

Q And on May 25th, 1990, did you sell a motor home to an individual named Luis Martinez?

A Yes, I did.

Q Okay. Can you tell us a little bit about how that transaction came about?

A They came in early in the morning and looked at the motor home, and then they came back that afternoon. We agreed on a price, and that afternoon they bought the motor home from me.

Q When you say they came in, who are you referring to?

A There was Luis Martinez and one other guy.

Q Do you see either Mr. Martinez or the other guy in the courtroom today?

A Yes, I do.

Q would you please identify him by describing what he's wearing or where he's seated?

A He's right behind you in the white shirt.

the cross.

MR. GREENBERG: Okay. We'll wait to recall him, Your Honor. That's all I have for now, Your Honor.

THE COURT: Any other questions for this witness?

MR. DEGUERIN: No, Your Honor.

MR. MCDONALD: No, Your Honor.

THE COURT: You may step down.

(Witness steps down.)

THE COURT: Next?

MR. HERMOSILLO: Mr. Salazar.

MR. ESPER: Your Honor, with respect to the record, I would ask the Court to give me a Rule 105 limiting instruction with respect to all of the testimony of Mr. Seaverns pertaining to Mr. Rasmussen.

THE COURT: I thought we did that this morning. Didn't you make that motion this morning?

MR. ESPER: I'm not sure if I did or not.

THE COURT: I think maybe you did, but if not, the

jury is so instructed.

(Court swears in the witness.)

JESUS ALBERTO SALAZAR, GOVERNMENT-S WITNESS, SWORN

DIRECT EXAMINATION

BY MR. HERMOSILLO:

Q Would you please state your full name for the record, sir?

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A My name is Jesus Alberto Salazar.

Q Mr. Salazar, how are you employed?

A Industrial Communications as a sales representative.

Q Okay. And what is Industrial Communications?

A we sell two-way equipment, paging, microwave, etcetera.

Q Okay. And where is that located?
A 5516 East Paisano.

Q Mr. Salazar, did there come a time back in March of 1990 -- were you working at that time for Industrial Communications?

A March, '90, yes, I was.
Okay. And what were your duties at that time?
A Sales representative.
Q And do you recall making a sale of some radios to an individual by the name of Bermudez?
A Yes,'sir, I do.
Q Can you tell us a little bit about that and how it came about?
A Well, the gentleman walked in with a couple of other gentlemen, and they just said they needed communcations. That's about all I can really -- I can't elaborate on that, other than the fact that they needed two-way communications.
Q what kind of two-way communications did they want?
A They said it would be used for the ranch.
Q Anything else?

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MR. DEGUERIN: That's all.
THE COURT: Any other questions? I guess not.

You may step down.

(Witness steps down.)

THE COURT: Next?

MR. HERMOSILLO: Ruben Lujan.

THE COURT: Have you taken the oath?

MR. LUJAN: No, sir.

(Court swears in the witness.)

RUBEN LUJAN, GOVERNMENT-S WITNESSr SWORN

DIRECTEXAMINAT10N

BY MR. HERMOSILLO:

Q Mr. Lujan, would you please state your full name for the record?

A Ruben Lujan.

Q How are you employed, Mr. Lujan?

A With Industrial Communications.

Q How long have you worked for Industrial Communications, sir?

A Seventeen years.

Q I take it then you were working for Industrial communications back in March of 1990?

A Yes, sir.

Q What were your duties at that time?

A I'm the shop manager and supervise the service and repair -

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Q Okay. Back on March the 9th of 1990, did you install some radios in a couple of Suburbans?

A Yes, sir.

Q And do you recall who that was for?

A For Mr. Bermudez.

Q Okay. Now, do you recall when Mr. Bermudez came in -

or did Mr. Bermudez come in at that time?

A Everything was done with Mr. Salazar in sales, and then we handle the installation.

Q Okay. And what kind of vehicles were these radios

installed in?

A Suburbans.

Q Okay. And

MR. HERMOSILLO: May I approach the witness, Your Honor?

THE COURT: Yes, sir.

Q (By Mr. Hermosillo) Mr. Lujan, let me hand you what has been marked as Government's Exhibits 70 and 71 and ask you to take a look at those, sir. And then 72 and 73. Do you recognize the vehicles portrayed in those photographs?

A Yes, sir.

Q Okay. Are these the Suburbans that you installed the radios in?

A Yes, sir.

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outweighing any relevancy it might have. And that is to this entire transaction concerning the Dodd affair.

MR. DEGUERIN: The same objection.

THE COURT: At this time those objections are overruled. Those exhibits may be admitted.

(Government's 16, 19-Ar 19-B,, 19-C, 21-A, admitted.)

MR. GREENBERG: I think that's it for right now, Your Honor.

THE COURT: You need to have a recess before your next witness, is that what you're saying?

MR. GREENBERG: Yes, Your Honor. I need to set up some equipment.

THE COURT: All right. A 15-minute recess.

(Short recess taken.)

THE COURT: Has your next witness been sworn, counsel?

is MR. GREENBERG: No, this witness has not, Your Honor.

(Court swears in the witness.)

LADY ALLISON JONES, GOVERNMENT-S WITNESS,, SWORN

22 DIRECTEXAMINAT10N

23 BY MR. GREENBERG:

24 Q Ma'am, please tell us your whole and complete name?

25 A Excuse me?

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1 Q Please tell us your whole and complete name.

2 A Lady Allison Jones.

3 Q And how are you employed?

4 A I work for Southwestern Bell Telephone.

5 Q Are you the records custodian?

6 A Yes.

7 Q For Southwestern Bell Telephone?

8 A Yes.

9 Q And pursuant to a subpoena, have you brought the

10 subscriber for certain telephones for me?

11 A Yes.

12 Q To court today?

13 A Yes.

Q And have you brought the subscriber for 859-3885?

A Yes.

And who is the subscriber listed to for 859-3885?

A Jesus Flores.

Q And have you brought the subscriber for 859-1610?

A Yes, I have.

Q And who is the subscriber for 859-1610?

A Jesus Flores.

Q Thank you.

MR. GREENBERG: I don't have any other questions at this time.

MR. DEGUERIN: No questions.

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A That's correct.

Q Okay. And they are in the telephone book, Rasmark Tet Charter Service?

A Yes, sir.

Q Okay. And they have an office there, Cutter Aviation,

do they not?

A Yes, they do, sir.

Q And let me talk first about this -- about this telephone conversation that we heard yesterday. You -- you are one of the case agents in this case, are you not?

A Yes, I am.

Q And you are aware, of course, of the Court authorized wire interceptions on a number of telephones, correct?

A Yes, sir.

Q one of those telephones was not subscribed to Mr. Rasmussen or to Rasmark Aviation, was it?

A No, sir.

Q Okay. And how many conversations do you think were intercepted during the course of the existence of the wire tap applications?

A I don't know, sir.

Q Hundreds?

A Yes, sir.

Q Maybe thousands?

25 A Possibly.

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1 Q Okay. And of over maybe thousands of conversations
2 that were intercepted, there was one conversation of all
3 those thousands between Mr. Flores and Mr. Rasmussen,
4 correct?
5 A Two, sir -- well -
6 Q One was a disconnect, right?
7 A Exactly. Two conversations, or two calls, but
8 basically one conversation. Yes, sir.
9 Q Okay. The one we heard yesterday where the battery
10 pack went out and they had to call back?
11 A Yes, sir.
12 Q Okay. And so out of thousands of conversations that
13 you intercepted involving the telephone -- telephones that
14 you believed to belong to Mr. Flores, there was one
15 conversation that was intercepted involving Mr. Rasmussen?
16 A To the best of my knowledge, that's correct, sir.
17 Q Okay. And is it your opinion that based upon that,

that there is more than a business relationship between Mr. Flores and Mr. Rasmussen?

A Excuse me, sir?

Q Was it your testimony that you think that there is more than just a business relationship based upon one conversation out of thousands that were intercepted?

A I testified that Mr. Rasmussen told me that his relationship with Mr. Flores was as someone who came in and

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chartered flights and was strictly business.

Q Okay. And the fact that there was one conversation with Mr. Rasmussen over all this period of time and all of these thousands of calls confirms that, doesn't it?

A Are you asking me if that sounds -

Q Yes. Is that consistent with just a business relationship rather than a personal or friendship-type relationship?

A in my mind, no, sir.

Q Oh. well, why weren't there more calls intercepted

involving Mr. Rasmussen if he was friends and had a social relationship with Mr. Flores?

MR. GREENBERG: Your Honor, that is argumentative.

THE COURT: I think so, too. I'll sustain the objection.

Q (By Mr. Esper) You say that in that conversation that we heard yesterday that Mr. Flores is asking Mr. Rasmussen if he can obtain for him a motor for a 206 airplane, correct?

A That is my belief. Yes, sir.

Q Okay. In that conversation, Mr. Flores is referring not to him but "they" want a 206 airplane, isn't that the truth?

A You want my recollection of the call?

Q Yes.

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best of my knowledge, sir.

Q Oh, okay. As a matter of fact, Mr. Perkins, Rasmark

provided you with all of these documents, which you -- which are copies of documents that the Government provided to me, reflecting all of the flights that they had pertaining to Mr. Flores, correct?

A They provided me with documents, as I recall, for nine flights that were related to Mr. Flores. That's correct.

Q And in the course of your investigation, you discovered that in talking with, certainly, other individuals involving Rasmark that they did a fairly substantial amount of jet charter service, correct?

A Yes, sir.

And that they conduct numerous flights on a weekly basis, do they not?

A I believe so. Yes, sir.

Q Okay. And whenever you asked Mr. Rasmussen about whether or not he had gone to Mr. Flores' house on May the 26th, he said that his recollection was that he was still in Belize on May the 26th, correct?

A No, sir. I didn't ask Mr. Rasmussen if he went to Mr.

Flores' house on May the 26th.

Q You asked him if he collected some money from Mr. Flores.

A If he made arrangements with Mr. Flores concerning

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money, yes, sir.

Q And do you know whether or not he even went to Mr. Flores' house on May the 26th?

A I donit know, sir.

Q okay. You just heard that conversation, correct?

A Yes, sir.

Q And in essencet it was Mr. Flores who called Mr. Rasmussen, isn't that right?

A Yes, sir. That's my understanding.

Q okay. And that was in the course of a conversation of looking for a motor for a 206 airplane, correct?

A That was part of the conversation. Yes, sir.

Q Okay. And in part of the conversation, Mr. Flores then

tells him,, 110h,, by the way. I have the money -- I have your money that we owe to you," correct?

A Yes, sir.

Q Mr. Rasmussen didn't call him asking for the money, did he?

A No, sir.

Q Okay. And in the course of the conversation, Mr. Rasmussen didn't demand payment of the money that was owed to him, did he?

A No, sir.

Q Okay. And in fact, Mr. Rasmussen told you that he had been on one occasion to Mr. Flores' house to pick up some

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money that was owed for some charters, correct?

A Yes, sir.

Q And didn't Mr. Rasmussen also tell you that with respect to the business, as far as the invoices and the receipt of money, that his wife was the one who handled

that portion of Rasmark?

A Yes, sir.

Q okay. As a matter of fact, the only portion of Rasmark that he handled were the planes and the flying and that type of thing?

A it appeared that way to me. Yes, sir.

Okay. And did he also not tell you that many times he was either flying a charter or was asleep after having flown a charter when other charters may have taken place and he not knew about them?

A Not quite in that format. No, sir.

Okay. well, didn't he tell you if he was out flying a charter and somebody else called in and wanted to charter a plane, he wouldn't know about it, would he, obviously?

A I would imagine not.

Okay. Now, with respect to the confusion over the acronyms of Los Angeles and San Diego, are you aware of what the acronym is for an airport in the Los Angeles area known as the Santa Ana Airport?

25 A No, sir.

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1 Q Have you ever heard of an airport as Santa Ana?

2 A I have heard of Santa Ana, California.

3 Q Okay. But you don't know what the acronym is, do you?

4 A No, sir.

5 Q So whenever we talk about the acronyms, tell the ladies

6 and gentlemen of the jury what we are talking about.

7 A An acronym, for example, for the Los Angeles

8 International Airport may be LAX, commonly referred to as

9 LAX; the LAX being the acronym for the airport.

10 Q just like El Paso is ELP, correct?

11 A Could be, yes, sir.

12 Q And it's -- usually the acronym is usually those little

13 things they put on your bags when you're going out of town,

14 the little sticker; that reflects the acronym, does it not,

15 when you travel on a commercial airline?

16 A Yes, sir.

Q Okay. And San Diego's is SAN, to your knowledge, is it not?

A I don't know.

Q You don't know?

A it sounds reasonable.

Q And you don't know whether or not the acronym for Santa Ana is SNA, do you?

A I don't know, sir.

Q Okay. If that were, in fact, the case, that would be a little confusing, wouldn't it?

A I could see where people could get that confused. Yes, sir.

Q Sure. Did Mr. Rasmussen say to the best of his knowledge that Mr. Flores was -- was the only cash paying customer that they had or one of the few cash paying customers?

A I believe it was maybe the only cash paying customer,

something along those lines.

Q Maybe the only cash paying customer?

A Yes, sir.

Q Okay. And,-of course, there is there is no cr'

with receiving cash for the payment of a charter, is there?

A No, sir, not to my knowledge.

Q Okay.

A Depending on the amount of the receipt of cash and how

it's handled, of course.

Q of course, if a charter is more than $10,000, if it costs more than $10,000 and they receive more than $10,000 in cash for that one charter, they have an obligation to fill out that Form 8300 that we heard Mr. Seaverns talking about, correct?

A Yes, sir.

Q Okay. And you would agree, would you not, that with respect to any cash that they receive, that so long as they

report it on their taxes, income tax return, they can do whatever they want with that cash, correct?

A Yes, sir.

MR. ESPER: May I have just one moment, Your Honor?

THE COURT: Yes, sir.

(By Mr. Esper) Did Mr. Rasmussen tell you, and did the records reflect that Mr. Flores always chartered these planes in the names of Jesse Flores or Vista Remodeling?

A Did Mr. Rasmussen tell me that?

Q In other words, did Mr. Rasmussen tell you they knew Mr. Flores as Jesse Flores?

A Yes, sir.

Q Okay. And did they know Mr. Jesse Flores as being the owner of Vista Remodeling?

A Yes, sir.

Q They didn't tell you they knew Jesse Flores by some other name, did they?

A No, sir.

Q They didn't tell you -- Mr. Rasmussen didn't tell you that Jesse Flores came in and introduced himself as somebody else, did he?

A No, sir.

Q Okay. And Mr. Rasmussen didn't tell you that Mr. Flores said that he was the owner of some other business

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A Yes, sir, it is.

Q Now, that is obviously a xeroxed copy and you know that through the ordinary discovery procedures in a criminal case that the Defense is often given copies of documents that the Government has obtained either through subpoena or request or so forth, correct?

A That's correct, sir.

Q And you obtained the original of those documents at some time in your investigation, I believe June the 25th?

A Yes, sir.

Q Those are documents from an aircraft repair company

of

some sort?

A From Tapaco Aircraft Parts and Accessories.

Q Yes, sir. And let me show you Defendant's Exhibit Number 2, which likewise are some xeroxed copies of some discovery material from Tapaco, and while I'm up here, Defendant's Exhibit 3, which are some xeroxed copies of some documents from Button Aviation. You are familiar with those documents, aren't you?

A I haven't gone through them all, but, yes, sir, this appears to be the documents that I received on June 25th.

Q Okay. The date that you went to Rasmark and spoke to Mr. Rasmussen about the 206 was August 23rd?

A Yes, sir.

MR. DEGUERIN: Judge, may I use the chart here?

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THE COURT: Yes, sir.

(By Mr. DeGuerin) You obtained records from Tapaco -- I guess I'm pronouncing that correctly -- on June the 25th,

1990, and Button Aviation around that same date?

A No, sir. The Button Aviation, I believe I got all these documents at the same place at the same time.

Q Oh, all of them came from Tapaco on June the 25th?

A Yes, sir.

Q All right. On May the 26th, that is the date of the intercepted telephone call between Mark Rasmussen and Jesse Flores in which Jesse Flores says that they need a motor for the 206?

A That's correct, sir.

Q All right. The records from Tapaco that you obtained, Defendant's Exhibits 1, 2 and 3, are records regarding a Cessna 206, correct?

A Yes, sir.

Q That's a Cessna that you and the other agents seized within a few days of the time that Jesse Flores was arrested on June the 19th or 20th, right?

A Sir, I seized that plane on the same date that I picked up these records.

Q okay. I didn't know the exact date. So you seized the plane and the records on June 25th?

A Yes, sir.

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Q On may the 24th, you knew through surveillance of Jesse Flores that he was seen meeting with a man named Jesus Zarzosa, and Jesus Zarzosa was seen shaking his finger at Jesse Flores and shaking a cellular telephone at Jesse Flores, correct?

A I had heard that. I don't remember the date, but I had heard that situation. Yes, sir.

Q I can -- if you question the date, I can show you the report. Any question about that now?

A No, sir.

Q All right. Okay. Now, to take it in sequence -- let me write this down. It's right one of those ways, S-a-r or Z a-r-z-o-s-a.

All right. On May the 24th, Jesus Zarzosa is seen shaking his finger and a cellular telephone at Jesse

Flores. On May the 26th, there is a telephone conversation. Jesse Flores calls Mark Rasmussen and says they need an engine or a motor for the Cessna 206, correct?

A Yes, sir.

Q You get the records on the Cessna 206 when you seize it and learn from the records that Jesus Zarzosa is the attorney who represents Arturo Bermudez, right?

A That's not from my knowledge, sir.

Q Well, sir, the last page of Exhibit -- Defendant's Exhibit 3, would you take a look at that? You did review

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those records you got, didn't you?

A Yes, sir.

Q The last page of that exhibit is a power of attorney appointing Jesus Zarzosa as the attorney for Arturo Bermudez to take title to the 206, right?

A It appears that way. Yes, sir.

Q And the date of that power of attorney is February the

16th, 1990?

A The 28th day of February, 1990.

Q Excuse me. The 28th day of February. In reviewing Those papers, you learned also, didn't you, that the Cessna 206 was purchased through Jesus Zarzosa acting as power of attorney, or as the attorney representing Arturo Bermudez in February of 1990, correct?

A As I recall, it was purchased from Spartan Electric. February of 1990 does sound correct, and the purchaser's name shown is Arturo Bermudez.

Q Engineer or Ingeniero Arturo Bermudez?

A I believe so. Yes, sir.

Q Now, in reviewing those records, you learned also, didn't you, that on May the 25th, Jesus Zarzosa purchased an engine for the 206 from Tapaco or Tapaco, correct? Let's see if I can find it right quick. Excuse me. I may have misspoke myself. May the 25th, 1990, there is a receipt by given by Tapaco to Arturo Bermudez for $10,000 as advance

on repair, Cessna 206, correct?

A Yes, sir.

Q And it's written out to the right, "Paid by Jesus Zarzosa in cash"?

A That's what is written there, yes, sir.

Q So at the time,, in August 23rd, when you went to talk to Mark Rasmussen to ask him whether Jesse Flores owned a 206, you knew, in fact, in February of 1990 Jesus Zarzosa, acting for Arturo Bermudez had purchased the 206, and May the 26th, which isn't written on this chart, Jesus Zarzosa paid money to Tapaco for repairs on the 206, and the documents that you seized, at the-time that you seized the plane revealed all of this; correct?

A I'm sorry. Could you run through that again?

Q All right. When you went to talk to Mark Rasmussen on August 23rd to ask him whether Jesse Flores owned a 206, you knew that, in fact, the 206 belonged to Arturo Bermudez and

that Jesus Zarzosa, that had shook his finger at Jesse Flores -- that on May the 25th, Jesus Zarzosa had paid for repairs to the 206. You knew all of that, didn't you, when you went to talk to Mark Rasmussen?

A I knew that the plane was in the name of Arturo Bermudez. I knew the name Arturo Bermudez was a false name. Therefore, the name was in an AKA. I knew that Jesus Zarzosa had been to Tapaco, made some arrangements and made

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some of the cash payments. Yes, sir.

Q You're saying that Arturo Bermudez is a false name?

A I have seen -- the individual has more than one name. Yes, sir.

Q But there is a man who is legitimately named Arturo Bermudez, he's an engineer and he lives in Juarez; you know that, don't you? Whether the man uses other names or not is not the question. There is an Arturo Bermudez whose

signature appears on a number of those documents, correct?

A Are you asking me if that signature appears or if I know that to be his true name?

Q Well, let's take it one at a time. First, the signature of Arturo Bermudez appears on many documents there, doesn't it?

A I believe so. Yes, sir.

Q it's a very distinct signature, isn't it?

A Yes, sir.

Q And every time you see the signature of Arturo Bermudez, it is a distinct signature and appears very similar each time, doesn't it?

A It does in those you just showed me. Yes, sir.

Q And in every document that you have seen that has Mr. Bermudez' signature on it, it appears the same, doesn't it?

A At this point, I really couldn't say. I can say that those two signatures are very similar, sir.

Q Well, you have other documents with the signature of Arturo Bermudez, don't you?

A Yes, sir.

Q There is a man whose name is Arturo Bermudez, whether or not he goes by other names, correct?

A There is an individual that goes by the name Arturo Bermudez, yes, sir.

Q And that individual is an engineer, to your investigation's knowledge?

A That individual uses the title "Ingeniero," which is engineer, yes, sir.

And the individual lives in Juarez?

A No, sir.

Q or at least in 1990 lived in Juarez?

A No, sir. If I may -

MR. DEGUERIN: Well, we move to introduce Defendant's Exhibits 1, 2 and 3.

THE COURT: Any objection?

MR. GREENBERG: No, Your Honor.

THE COURT: They may be admitted.

(Defendant Flores Exhibits 1, 2, 3 admitted.)

MR. DEGUERIN: And we'll mark the chart as Defendant's Exhibit 4 and move to introduce it as a summary of the documents and the testimony.

MR. GREENBERG: Your Honor, the testimony should

Flores or Mr. Roybal in particular.

MR. MCDONALD: Your Honor, if I may, I further would object to -- continuing objection and state for the record that Mr. Roybal does not believe that that limiting instruction is sufficient to cure the harm.

THE COURT: Proceed.

Q (By Mr. Greenberg) You did engage Mr. Rasmussen in a conversation about the activities of Mr. Flores, sir?

A Yes, sir, we did.

Q What did you tell him?

A Well, it was about a 30-minute conversation.

Q Well, specifically, did the-time ever arise during this conversation where you told him about any illegal activities that you suspected?

A I don't really understand the question, but, yes, sir, we discussed the fact that I kept the aircraft under observation to make sure that there was nothing going on.

Q Why was that?

A Mr. Rasmussen has instructed me to do that when we are in Mexico.

Q in regard to your dealings with Mr. Flores and the flights he flew is what I want to know, sir.

A I'm sorry?

Did you ever engage Mr. Rasmussen, Mr. Mark Rasmussen, the owner of Rasmark, in a conversation at a time after you

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returned from this flight to Obregon, Chihuahua, or Mexico,

about any illegal activities concerning Mr. Flores?

A No.

Q Did Mr. Rasmussen ever remark to you that Mr. Flores was involved in any illegal activities?

A No, sir.

Q How many flights did you take with Mr. Flores or his associates that you knew to be connected to Mr. Flores?

A only counting the record that I've seen, I made three trips to Florida and one trip to Obregon. That's all I can recall. Oh, there were two trips to Cancun.

Q Okay. The first trip that you ever took was to Obregon and then on to Matamoros, is that correct?

A That is correct. Yes, sir.

And the second trip you took with him, sir, was to Cancun?

A No, sir. That was with the gentleman in the picture that you showed me.

Q All right. How many trips to Cancun did you take?

A We took him, his wife and one other female over, and I went -- came home, went back approximately a week later and brought the same three people back.

Q Okay. So there was actually two trips?

A Yes, sir.

Q And two billable occurrences, correct?

BURNETTE-CROSS *884

whether you were working as a contract employee, ever -- was there anything that ever occurred that would have led you to reasonably believe that the plane was being used for some unlawful purpose?

A No, sir.

Q That it was being used for some illegal purpose?

A No, sir.

Q That it was being used to facilitate or help assist in the commission of a crime?

A No, sir.

Q if it had been, would you have told Mr. Rasmussen about it?

A Yes, sir.

Q Okay. To your knowledge, has Mr. Rasmussen ever allowed any of his aircraft to be used in such an illegal manner?

A No, sir.

Q Mr. Greenberg asked you whether or not you had any discussions with Mr. Mark Rasmussen about any alleged illegal activities of Mr. Flores, and the answer was no, is that correct?

A That is correct.

Q When I say illegal activities, I'm saying violations of law, correct?

A That's correct.

***885**

Q Did Mr. Mark Rasmussen ever discuss with you that he

knew that Mr. Flores was allegedly violating the law?

A No, sir.

Q Mr. Burnett, if you were not present -- well, let me ask you this. On June 29th of 1990, you say that you engaged in a conversation with Mr. Flores concerning you flying an airplane that belonged to Rasmark, correct?

A Yes.

Q Do you know from your own personal knowledge whether or not arrangements to have someone that was employed by Rasmark fly that plane, had, in fact, not materialized?

A I'm very vague on that. We-did have another pilot. He was not available that morning. I don't remember the exact circumstances of why.

Q Okay. Would that have been Mr. Young?

A Yes, sir.

Q Okay. So whenever you flew these three flights on June the 9th, 10th and 12th, in essence, Mr. Flores paid you pilot fees?

A Yes, sir.

Q And the airplanes were leased from Rasmark, correct?

A That -- yes. That has to be correct.

Q Do you know whether or not Mark and Debra Rasmussen were even in El Paso, Texas, at that time?

A I know that they were not.

*1042

circumstantial evidence under all of the circumstances which would be enough to let those go to the jury.

As to Count Nine, the elements of that offense are: first, that the defendant, whichever the defendant was, used a facility in interstate or foreign commerce; second, that it was used with the intent to promote, manage, carry on etcetera, the illegal activity, specifically conspiracy to possess drugs with intent to distribute; and third, that thereafter the defendant performed or attempted to perform acts which did promote, establish, manage and carry on,

etcetera, the illegal enterprise. The fault I can see in the proof on that count is not all of this talk about who had knowledge of what when,, but just there's not sufficient proof that those trips, suspicious as they might be, were for those purposes or that thereafter those acts were performed. Suspicion, of course, is not enough. The test is proof beyond a reasonable doubt. So the motions for acquittal by the two defendants named in Count Nine will be granted. That count will be removed from the jury's consideration, withdrawn from the jury because of the granting the motion for acquittal.

Of course, Mr. Esper, as far as you're concerned, you're excused from the case. Mr. DeGuerin is not through yet because there are other counts to face.

What are your plans with regard to putting on

[End of Excerpts]

App. 1290

Form 4606

(Rev. November 1986)

Department of the Treasury -Internal Revenue Service
Examination changes - Partnerships, Fiduciaries,
S Corporations, and Interest Charge Domestic
International Sales Corporations

Name and Address

Employer Identification: 88-0214673
Number Form Number: 11205

RASMARK JET CHARTER, INC.
6805 BOEING Rd.

Person Examination: Changes Were Discussed With — Name: Albert Apodaca, Title: CPA

My examination of the above returns resulted in the following adjustments, which we have discussed. We will notify you by mail after the District Director has reviewed these changes.

1. Adjustments to ordinary, distributable net, or taxable income.

	Year: 9012	Year : 8912	Year:
a. No change - Subject to	-0-	-0-	
b. District Director's Approval			
c.			
d.			
e.			
f.			
g.			

2. Total adjustments to ordinary, distributable net, or taxable income.	-0-	-0-
3. Ordinary, distributable net, or taxable income as reported.	210,364	76,081
4, Corrected ordinary, distributable net, or taxable income.	210,364	76,081
5. Other adjustments.		
a.		
(1) Adjustment	-0-	-0-
(2) As reported	-0-	-0-
(3) Corrected	-0-	-0-
b.		
(1) Adjustment	-0-	-0-
(2) As reported	-0-	-0-
(3) Corrected	-0-	-0-

Remarks [Blank]

Examiner's Signature	District Office	Date
/s/ Stephen P. Harris	Austin	4/30/92

The person whose signature appears below has reviewed and hereby accepts the examiner's recommended adjustments listed above resulting from an examination of returns of the entity identified above.

Signature of Partner, Fiduciary, or Authorized Corporate Officer
Date [Blank]

NO CHANGE - NO SIGNATURE REQUIRED - COPY GIVEN TO ALBERT APODACA [Handwritten in original]

[See TAOP at App. 185, ¶ 249]

Case No. 16934
Dept. No. I

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF DOUGLAS

LORI RASMUSSON,

Plaintiff,

vs.

MARK B. RASMUSSON,

Defendant.

/

AFFIDAVIT OF WILLIAM COLE IN SUPPORT OF MOTION TO MODIFY VISITATION

STATE OF NEVADA)
COUNTY OF DOUGLAS) ss.

WILLIAM COLE, being first duly sworn, deposes and says:

1. I am an attorney licensed to practice in the State of Nevada and have been retained by Lori Nelson to represent her in the above-captioned action.

2. In early June, 1992, I was contacted by Lori Nelson who requested that I contact United States Customs Agent Larry Frost regarding their investigation of Mark and Debra Rasmusson and the danger that he believed Mark Rasmusson, Jr. was in.

3. On June 17, 1992, I spoke with Mr. Frost. He advised me

that there was an ongoing investigation of the Rasmussons by the federal authorities concerning alleged criminal activities relating to criminal charges which had previously been dismissed. (See attached newspaper article.) [Record below] Mr. Frost stated that the charges had been dismissed during trial because a witness failed to appear and testify.

4. Mr. Frost told me that within the previous 30 days, Debra Rasmusson had come to his office high on controlled substances and had admitted that she was addicted to controlled substances and had been for many years. (Mr. and Mrs. Rasmusson have previously testified in visitation hearings that they do not use controlled substances.) She also told Mr. Frost that she was carrying a weapon because she thought her husband, Mark Rasmusson, and his friends were trying to kill her because she was a security risk. Mr. Frost told me that Debra Rasmusson told him that she always carried a gun because she feared for her life. In fact, it was the local police department that had referred her to Mr. Frost after she told the police that she was fearful for her life. Mr. Frost told me that Debra Rasmusson had certain books and records in her possession belonging to Mark Rasmusson, which were later confiscated by Mr. Frost.

4. Mr. Frost expressed extreme concern about the safety of Mark Rasmusson, Jr. during visitation in the present atmosphere. Mr. Frost volunteered to come to Douglas County to testify regarding these matters if he was served with a local subpoena.

4. [sic] Mark Rasmusson, Jr.'s next visitation with Mark Rasmusson, Sr. is due to take place on August 1, 1992. Therefore we

request that the court set a hearing on this matter before that time.

/s/ WILLIAM COLE

Subscribed and sworn to before
me this 10th day of July, 1992.

/s/ Silvia Motta
Notary Public - Nevada
Douglas County

[See TAOP at App. 190, ¶ 263; App.307, ¶ 30, D. Rasmusson's Affidavit]

[Excerpts: Customs Form 6051 (122085)]

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

No.0499983

CUSTODY RECEIPT FOR RETAINED OR SEIZED PROPERTY

1. DISTRICT - PORT: 2402

2. SEIZURE NO. [Blank]

3. GENERAL ORDER NO. [Blank]

4. OTHER CONTROL NO. [Blank]

5. DATE RET/SEIZED: 11-10-92 TIME OF DAY: 2245

6. RETAINING/SEIZING OFFICER: S/A L. Frost

7. TELEPHONE NO.: (915) 540-5700

8. NAME & TYPE OF CARRIER [Blank]

9. NAME & ADDRESS 0F OWNER/CARRIER/CONSIGN:
Rasmusson, Deborah
1157 Leo Collins
El Paso, TX

10. EIN/IRS NO. [Blank] 11. NO. OF PKGS. [Blank]

12. APPROX. WGT. [Blank]

13. ENTRY NO (WHB, IT, TE, OTHER (DESCRIBE): [Blank]

14. SEAL OR OTHER ID NOS. (Bag Tag, B/L, AWG): [Blank]

15. IDENTIFYING MARKS PLACED ON SEIZURE: Initialed By 11619

16. SECTION OF LAW VIOLATED OR REASON FOR RETENTION: 31 USC 5314 18 USC 1956

17. IS PROPERTY TO BE HELD AS EVIDENCE 1: YES - GIVE LINE ITEM NO(S)

18. REMARKS (INCL. RECOMMENDED TYPE STORAGE, IF APPLICABLE): [Blank]

19. DISTRICT DIRECTOR'S ADDRESS: Robert Holler, 9400 Viscount, El Paso TX 79925

20. PROPERTY (By Line Item) Attach CF 58 if conveyance.

a. LINE ITEM NO.: b. DESCRIPTION: Financial Records

c. CONDITION: Blank d. TYPE OF CONTAINER: [Blank]

e. U/M: EA f. QTY: 5 g. APPRAISED DOMESTIC VALUE: [Blank]

h. HELD By DIST.: [Blank]

21. ACCEPTANCE/CHAIN OF CUSTODY

a. DATE: 11-10-92

b. BY - INDIVIDUAL, TITLE, ORGANIZATION: Lawrence Frost, SA, USCS

c. ITEM(S): 1 d. NO. OF UNITS:

e. SIGNATURE: L E. Frost /s/_____

[End of Excerpts]

[See TAOP at App. 192, ¶ 271-76]

EXCERPTS FROM
U.S. DEPARTMENT OF JUSTICE/FEDERAL BUREAU OF INVESTIGATION

FO-617 (Rev. 5-13-92) **SUBPOENA**

In the matter of case numbers Detroit File 245C-EP-29034

TO: Office of the Secretary
Ford Motor Company
World Headquarters
AT: Dearborn, Michigan

GREETING:

By the service of this subpoena upon you by SA PATRICK M. BRESNAHAN who is authorized to serve it, you are hereby commanded and required to appear before SA BRESNAHAN, an officer of the Federal Bureau of Investigation to give testimony and to bring with you and produce for examination the following books, records, and papers at the time and place hereinafter set forth:

> Any and all shipping records pertaining to shipments of Ford Motor Company goods by Rasmark Jet Charter, Incorporated of El Paso, Texas for the years 1990, 1991 and 1992.

PURSUANT TO AN OFFICIAL CRIMINAL INVESTIGATION OF A SUSPECTED FELONY BEING CONDUCTED BY THE FBI, IT IS REQUESTED THAT YOUR COMPANY FURNISH THE REQUESTED INFORMATION.

YOU ARE NOT TO DISCLOSE THE EXISTENCE OF THIS

REQUEST. ANY SUCH DISCLOSURE COULD OBSTRUCT AND IMPEDE THE INVESTIGATION BEING CONDUCTED AND THEREBY INTERFERE WITH THE ENFORCEMENT OF THE LAW.

Cost for Production of Records: Only financial institutions providing financial records under the Right to Financial Privacy Act (Public Law 95-630; 12 U.S.C. 3401 et seq.) and persons or entities providing certain electronic communications contents, subscriber records, or other information under the Electronic communications Privacy Act (Public Law 99-508, Title 11, Sect. 201; 18 U.S.C. 2706) are entitled to the payment of costs for production. If the anticipated costs of production are expected to exceed $500.00, please notify Special Agent Bresnahan of the dollar amount of the anticipated costs prior to the production of such records.

Place and time for appearance:

At 477 Michigan Avenue, 26th Floor, Detroit, Michigan 48226 on the 28th day of January 1993 at 9:00 o'clock A M. Failure to comply with this subpoena will render you liable to proceedings in the district court of the United States to enforce obedience to the requirements of this subpoena, and to punish default or disobedience.

Issued under authority of See. 506 of the comprehensive Drug Abuse Prevention and Control Act of 1970, Public Law No. 91-513 (21 U.S.C. 376)

ORIGINAL

Signature /s

Issued This 14th day of January 1993

Title: ASAC

[End of Excerpts]

[See TAOP at App. 207, ¶ 322-26]

[Paragraph numbers added to text]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
EL PASO, TEXAS

July 26, 1993

Ford Motor Company
Staff Security Investigations
American Road, Room 418
World Headquarters
Dearborn, MI 48121
ATTN: Phil Asiala

Dear Mr. Asiala,

1. The united States Customs Service, Office of the Special Agent in Charge, El Paso, Texas is currently engaged in a conspiracy investigation of one of Ford Motor Company's contract carriers, Rasmark Jet Charter Inc. The investigation involves alleged violations of numerous federal statutes.

2. During the course of this investigation, possible involvement of a Ford Motor Company employee, Andrew Gantkessy, has come to light. As of this date it appears that Mr. Gantkessy has received numerous cash payments and free Lear jet charters from Deborah Rasmusson as payment for favors Rasmark has been granted by Mr. Gantkessy while acting in his capacity as a Traffic Manager for Ford Motor Company. The interest of the United States Customs Service in this matter relates to possible false transportation invoices and concealment of income from these false invoices for international cargo flights Rasmark has allegedly made for Ford Motor Company.

3. The basis for the allegations relating to Mr. Gantkessy and

his relationship with Rasmark and a newly formed shell company, Next Flight Incorporated, are gleaned from several confidential source interviews. There is also information gained from statements made by Mr. Gantkessy during interviews with Special Agents assigned to this investigation which confirm the confidential source allegations. As of this date Special Agents have collected irrefutable evidence that Mr. Gantkessy has in fact received several thousand dollars in free aircraft charters and cash payments from Deborah Rasmusson, however Special Agents have not established which invoices submitted to Ford by Mr. Gantkessy for payment to Rasmark are fraudulent. Mr. Gantkessy has held firm, on his statement that Deborah Rasmusson gave him thousands of dollars because she liked him.

4. The following is a brief synopsis of the evidence obtained thus far which indicates a conspiracy to commit fraud by Rasmark and Mr. Gantkessy:

5. Mr. Gantkessy stated that Deborah Rasmusson offered him $5,000.00 per Ford charter which Mr. Gantkessy dispatched through Rasmark. Mr. Gantkessy stated that he declined this offer. However, Mr. Gantkessy stated that approximately one week after this offer he travelled to Las Vegas, Nevada with the Rasmussons and that all expenses were paid by the Rasmussons including $500.00 cash and additional slot machine money which he received from the Rasmussons.

6. Mr. Gantkassy stated that he was taken on a total of four trips to Las Vegas by the Rasmussons on Rasmark aircraft. Mr. Gantkessy further acknowledged that he went to the Super Bowl and two other professional football games in California with the Rasmussons on Rasmark aircraft. All of these trips and attendant accommodations were at no cost to Mr. Gantkessy. Mr. Gantkessy stated that he was told by Deborah Rasmusson that if anyone ever questioned his trips on Rasmark aircraft, he was to tell them that the trips were charters for which he had paid Rasmark and she would provide false invoices to him for verification.

7. Mr. Gantkessy stated that he received cash from Deborah Rasmusson on several occasions and that these "gifts" were in amounts

ranging from $50.00 to $3,500.00. Mr. Gantkessy stated that on one occasion, while in Las Vegas, Nevada, Mark Rasmusson gave him between $1,200.00 and $1,500.00, Mark Rasmusson stated that the money was from Deborah Rasmusson. Mr. Gantkessy stated that he does not know the total amount of cash he received from Rasmussons.

8. Mr. Gantkessy stated that Deborah Rasmusson offered him a percentage on a second air freight company she owns which is called Next Flight Inc. Mr. Gantkessy stated that he declined this offer.

9. Based on the above information the Special Agent in Charge, El Paso, Texas is requesting that Ford Motor Company Internal Security Division provide this office with all available information concerning this matter. It is specifically requested that you provide this office with all previous reports relating to this issue as well as copies of all invoices and billings by Rasmark to Ford Motor Company for air charter service. This office has special interest in flights between the United States and the Republic of Mexico.

10. Please direct any information which you develop or any questions regarding this matter to Special Agent Larry Frost of my staff. Special Agent Frost can be contacted at (915) 540-5700.

Sincerely,

/s/ MICHAEL T. LAPPE
Special Agent in Charge

[Filed 5/9/94]

EXCERPTS FROM EEO COMPLAINT OF ANDREW GANTKESSY

INTRODUCTION:

This is a complaint brought by Andrew Gantkessy to redress discrimination of a continuing nature against him based on a pattern and practice of discrimination by the Favesa Ford Motor Company as a person over forty (40), who assisted another individual in a prior EEO complaint.

AGE:

I am fifty nine (59) years old, and have been an employee of the Favesa (Ford Motor Company) for twenty four and one-half (24 1/2) years. Because I was an older employee, and was close to the age wherein I could retire, I have been discriminated against.

REPRISAL\RETALIATION:

Ms. Beverly Enriquez, an employee of Favesa (Ford Motor Company), filed a complaint alleging discrimination against her in early 1992. I do not know the specifics, but I do know that she alleged sexual harassment and a hostile work atmosphere based on unwelcomed sexual advances. I gave a statement in Beverly's behalf and fully supported the truth behind her allegations.

I know that another woman, Manuela Barron, also a Favesa employee, who also was sexually harassed and she complained about Joe Sudomir, Manager of Favesa Warehouse, during the investigation conducted by Ford at the El Paso warehouse location.

SPECIFICS:

1. During the years 1984 to 1993 I received performance ratings which were excellent or excellent plus.

2. During the year 1984, and from 1986 to 1991, I worked the most over time of any employee at Ford Favesa warehouse. I do not know whether I worked the most over time in 1992 but I was up there.

3. I never had any disciplinary action assessed against me in twenty four and one half (24 1/2) years.

4. In April of 1989, I received my promotion to General Traffic Analyst, grade 8, supervisor. I believed that I was in line for a promotion to a grade 9, and I based this on the fact I was responsible for the warehouse when the manager was absent. It should be further noted I oversaw the warehouse and negotiated rates with truck carriers when necessary.

When the promotion was made, it is given to Joe Sudomir, a person younger than me, without a degree. Management told me that

[End of Excerpts]

[See TAOP at App. 208, ¶ 328-331]

[Paragraph numbers added to text]

MEETING WITH U.S. CUSTOMS
AUGUST 18, 1993

1. A meeting was conducted with U.S. Customs Federal Agent, Larry Frost, in the restaurant of the Marriott Hotel on 8/18/93. Phil Asiala, WHQ Security, and Tim Pomaville, PTPD Personnel Relations were present. The intent of this meeting was an opportunity for Mr. Frost to explain the position of U.S. Customs in this matter, as it relates to Andy Gantkessy and Rasmark Charters.

2. Mr. Frost indicated that Gantkessy was deeply involved with the Rasmussons and Rasmark charters, and described pertinent testimony that implicates Gantkessy in accepting money, air transportation, and other forms of kickbacks from Rasmark. He further explained that there are 11 full-time federal agents from other departments within the Federal Government that are assigned on a full time basis to investigating this case. Their investigation centers around drug trafficking over the border from Mexico to the United States. He indicated that he could not discuss the investigation, nor could he reveal any other details, however, he assured us that Mr. Gantkessy has become a part of the investigation.

3. Mr. Frost reiterated the previous position of the government investigation, indicating that although he could not reveal their findings, that he had reviewed the matter with legal counsel. Based upon the advice from Federal lawyers, they can and will testify as to their knowledge of Gantkessy's activities while employed with Ford Motor Co. Although they do not want to jeopardize their ongoing investigation in criminal activities involving Rasmark, he assured us that if requested, they could legally answer questions regarding Gantkassy's activities and testimony during their investigation.

/s/ T. Pomaville

[See TAOP at App. 209, ¶ 333]

[Paragraph numbers added to text]

MEETING WITH U.S. CUSTOMS AND EL PASO POLICE SEPTEMBER 24, 1993

1. Met with Fred Schroeder, U.S. Customs and another member of the Task Force from the El Paso Police. They recommended that we speak with Bob Hunter from the air charter service known as Kitty Hawk. He knows a lot about the activities of Rasmark and Andy Gantkessy. He knew a lot about Gantkessy's corrupt activity even though he may not be subject to criminal prosecution. They did state, however, that Andy will most likely have major problems with the IRS, because it will be established that he has been receiving payoffs from Rasmark, and naturally, did not claim any of it. They describe Hunter as a willing participant who will quickly describe his knowledge of Gantkessy's cheating Ford out of large amounts of money and stating, "don't worry about it". In one of Mark Rasmusson's moments of anger over a pending divorce he made the statement to Hunter that Andy got paid of "big time".

2. Schroeder also states that it is important for us to know that the second meeting that they had with Gantkessy was at the request of Gantkessy, and he volunteered all of the information. He vas not asked, threatened, or coerced into saying anything, but came in voluntarily and admitted receiving marijuana from Debbie and $9,000 in cash, which did not include flights, gifts, lodging or any other costs of travel. He gave specific answers to questions and expounded on what he did. He stated that he knew he was violating Company rules. He said, "I'll cooperate, just don't tell Ford. I'll lose too much. I'll wear a tape recorder if you want, but just don't tell Ford".

3. It should be noted that he admits cheating on shipments by using more airplanes and other items to boost Rasmark profits.

4. THESE AGENTS REMINDED US OF ONE VERY IMPORTANT ISSUE. GANTKESSY CANNOT TAKE THE STAND AND TESTIFY ON ANY OF THESE ISSUES IF HE WERE TO BRING A LAWSUIT AT FORD, BECAUSE IT'S A CRIMINAL OFFENSE TO LIE TO FEDERAL AGENTS. IF THE ISSUE GOES TO COURT HE WILL END UP BEING PROSECUTED FOR FALSIFYING INFORMATION TO THE FEDERAL AUTHORITIES. THEY ARE STILL COOPERATING AND WILLING TO TESTIFY TO GANTKESSY'S PARTICIPATION IN ACTIVITIES OF RASMARK.

[Ford Motor Company's document No. F1000421]

[See TAOP at App. 196, ¶ 284–87]

[Paragraph numbers added to text]

EXCERPTS FROM GANTKESSY'S EEO FILE

January 2, 1992

CONFIDENTIAL

1. A series of meetings with various suppliers and employees who report to Sudomir were scheduled for the week of December 16, 1991. The purpose of the trip to El Paso was as follows:

Inform the employees and El Paso management of the Employee Relations Review results.

* Obtain written statements from employees regarding specific allegations.

* Interview suppliers regarding potential personnel issues and appropriate business -practices by Ford employees.

SUPPLIER (CARRIER) INTERVIEWS

2. Aero Freight, Inc. was identified by Ms. Rasmusson as a carrier who had experienced similar slow payment by Sudomir. Gail Beech and Mark Short were interviewed. The interviews were conducted on Tuesday, December 17, 1991.

GAII BEECH OWNER /PRESIDENT OF AERO FREIGHT, INC.

3. Beech believes that the Gantkessy and/or Sudomir have a sweet heart deal with Rasmark. Beech bases this belief on the following: Gantkessy was off work for one (1) month in

June 1991. During that period, Sudomir moved all the charter business to Aero Freight. Once Gantkessy returned, the charters were returned to Rasmark. Aero Freight informed Sudomir that they charged less than Rasmark for the same service and suggested that they provided better quality service. Further, Aero Freight asked if there was anything wrong, please inform the carrier so they could respond. Beech indicated that excluding Rasmark, all the carriers in the area charge the same fees. Beech indicated that there have been rumors among the pilots and operators regarding Rasmark and Ford's business relations. Rumors suggest that Gantkessy and possibly Sudomir are receiving sexual favors and are on the Rasmark payroll. According the Beech, Joe Teuchert, Viking Charter, (612-726-1640) stated that Ms. Rasmusson had instructed them to add $2,500 to all bills going to Ford. Aero Freight was able to achieve a cost reduction from Viking. Beech contacted Gantkessy to indicate the cheaper fees obtained from Viking would result in charging Ford less. Gantkessy called Ms. Rasmusson to inform her that Viking had struck a deal-with Aero Freight. Ms. Rasmusson called Viking to demand the same treatment. Beech suggests that Gantkessy went out of his way to protect Rasmark business. Beech indicated that she and others near the air field have observed Rasmark using three (3) or four (4) Lear jets when one (1) Falcon would do the job and was available. Beech stated that she and others have observed Rasmark load a plane and pull it out of the way waiting for one of their own pilots to return. Beech indicated that the appropriate procedure would be to use one of the other pilots available on the field to move the merchandise. That is, when customers come to a charter company they are in a hurry or they would send the products using another mode of transportation. Beech alleges that this practice is a special deal between Gantkessy and the carrier to increase business for Rasmark. Beech indicated that it was virtually impossible to get around Gantkessy She stated that he controls everything. Beech believes that Sudomir must be involved in the unprincipled business practices between El Paso warehouse and Rasmark.

4. Beach described Sudomir as short fused, very demanding

and does not cut one any slack.

5. It is very difficult to get payment from the warehouse. It takes 120 180 days for payment. One bill from Favasa took a year.

6. Beaech had mixed feelings regarding who was involved in slow Payment. Beech can't understand how Sudomir could not know what was going on. She believes that Sudomir was in on it, or Gantkessy effectively kept him isolated.

7. Beech believes there is no doubt that Gantkessy is on Rasmark's payroll. The only question from her perspective is whether Sudomir is also on Rasmark payroll.

8. Beech believes there is no explaining why Gantkessy would refuse Aero Freight and one hour later go to Rasmark and pay $.20 more per mile. She stated, this is a very competitive business, it is not just Aero Freight, the other carriers charge less than Rasmark and offer better service. Mc Crain Aviation made offers to Gantkessy which were refused. Everybody is cheaper than Rasmark for similar or better equipment and better service. Rasmark and Ford have been a joke around here with pilots and operators. Beech indicated that they used to sit and watch Rasmark violate FAA regulations. Rasmark would over fill the planes, damage the cargo, and Ford would continue to pay a premium price to do business with Rasmark.

9. Beech said she and the other operators and pilots have lost respect for Ford. The belief is that Ford is just giving away money. She indicated that everyone marveled at how every principle of good business is violated by Ford and Rasmark.

10. Cisa - Favesa shipment -- Aero Freight charged $1000 less per trip versus Rasmark. Yet, they were forced to use Rasmark. (Fernado Astiazaran, Manul Vega, and Juvensio Hernendes contact at 011-52-62170200 or 011-52-621-70450.)

11. Beech indicated that the unprincipled businesses practices have been going on for approximately 2 years. (Sudomir

and Ms. Rasmusson have both been involved just over 2 years.)

12. Beech described the history of Rasmark as follows:

13. Mark Rasmusson is the classic poor little rich boy. His grandfather invented the popsicle. Mark received a large inheritance. He invested the money in a few planes. Mark was a poor business person, all he really liked to do was fly. As a result, Mark worked for Aero Freight. Beech paid the bills, Mark flew his planes and Beech would give Mark a salary plus any profit from his assets.

14. Mark and a pilot (George Arnold) met Deborah Rasmusson on a trip to Alaska. Mark returned from the vacation telling stories about this prostitute he met named Deborah (Alaskan registered prostitute under the name of Deborah Maye). Mark told some sordid stories about his and George's experiences in Alaska. Approximately two weeks later on another trip to Alaska, Mark was married to Deborah and she owned one-half of Rasmark, Inc. Rasmark began to function independent of Aero Freight. . . .

15. Beech suggests that Deborah used the incident at the hotel room as blackmail to marry Mark and obtain co-ownership of Rasmark, Inc. Traffic people from other organizations talk of the parties and the sexual favors provided by Rasmark for business. One of the pilots said Deborah bragged that she had three (3) traffic managers, other then Ford's, on Rasmark's payroll (Beech did not reveal the name of the pilot). Hearsay suggests that Deborah is giving sexual favors to Gantkessy. Sudomir may also be involved. Hinez is the guy to talk to; He worked for Rasmark for approximately one year. Hinez left Rasmark because of corrupt business practices by Rasmark.

MARK SHORT, TRAFFIC SPECIALIST, AERO FREIGHT, INC,

16. Short stated that Ford and Rasmark are involved with graft and corruption. Ford is a pillar, yet they has become a joke

among the local carriers. It has been going on for a long time. Short indicated that he has a friend (Chris Hinez) who would like to discuss his experience with Rasmark. Hinez worked for Rasmark for approximately 11 months in 1990/91. Hinez may be reached at his home on (915) 779-2137 or by mobil telephone at (915) 526-4835. Short indicated that Beech refused to participate in any charters if Rasmark was involved in the shipment. Short was instructed by Beach to agree only if Aero Freight could bill Ford directly. He indicated that Beech felt Rasmark was unethical in their billing practices of Ford. Short indicated that Rasmark charges $2.90 per Lear 25 mile and Aero Freight charges $2.50 per Lear 25 mile. Short stated that the other carriers in the area charge the same rates Aero Freight, but, Rasmark is higher on all there freight charges. Short has heard that Rasmark charges Ford as high as $3.15 per Lear 25 mile. Short had brought this discrepancy to Gantkessv attention on several occasions. Gantkessy insisted on doing business with Rasmark.

CHRIS HINEZ TRAFFIC SPECIALIST, VIKING AVIATION

17. Hinez is a former employee of Rasmark, Inc. He worked for Rasmark for about 11 months in the 1990/91 period. Hinez is very interested in discussing his experiences as a Rasmark employee and Rasmarks' dealings with Ford. I spoke with Hinez by telephone on December 17, 1991. He contacted me at home on January 6, 1992. Hinez is fearful of Ms. Rasmusson and what action she might take if she discovered he was talking to Ford. Hinez said Ramusson has a reputation of threatening behavior. He supports this reputation with his observations of her making threatening telephone calls to another former employee of Rasmark in his presence.

18. Hinez has stated that he went to Gantkessy on numerous occasions with proposals to reduce charter costs. On every occasion Gantkessy objected to these initiatives. On several of these occasions Mr. Rasmusson and Gantkessy berated Hinez for his attempts. to reduce Ford's charter costs.

19. In a separate meeting scheduled by Gantkessy, Gantkessy told him that Ford is not his or Rasmark's friend. That it is not in his or Rasmark's best interest to decrease charter costs.

20. Hinez stated that in one incident he and Wade (warehouse employee) worked together to combine several partial Lear 25 flights into one Lear 25charter. Hinez and Wade achieved the savings by adding more pallets to a flight. The next day Gantkessy chastised Hinez for his effort. Gantkessy concluded his remarks by adding, now Rasmark does not have a flight for this morning.

21. Hinez told me about an incident that occurred in December of 1990. Ms.
Rasmusson sent Hinez out to cash a check for several thousand dollars. The check stub led Hinez to suspect the check was intended for Christmas bonuses for some employees. Hinez queried Rasmusson as to whether the money was for employee Christmas bonuses. Rasmusson responded that if you ever bring me the kind of business this guy has, you too will receive a bonus. Regarding the nature of the stub, Rasmusson indicated that she could not put down the real purpose for the check. The next evening at the Rasmark Christmas party attend by Gantkessy and held at the Rasmusson home, Gantkessy was giving extravagant tips to the bartender, who was Hinez's younger brother. Hinez said something to Ms. Rasmusson regarding Gantkessy's behavior she replied, don't worry about it, he has received a large sum of money. Hinez concluded that the check he cashed was for Gantkessy.

22. Gantkessy identified Stacy Barnett, Sales Representative, Burlington Northern and Susan Fowler-Cohen, Sales Representative, Roadway as female suppliers that Sudomir had made repeated comments about and who Gantkessy suggested may have been sexually harassed by Sudomir.

STACY BARNETT, SALES REPRESENTATIVE, BURLINGTON NORTHERN

23. Sudomir is very vocal. He is the kind of person who has no mid-point. He has a tendency to become very angry. All communications must go through Sudomir. There have been case were Sudomir has not been available, and Barnett went to Gantkessy as next and command. Sudomir would still become very angry and vocal. There has been a history of slow invoices. Barnett indicated a better person to contact would be Gerschen at (714) 752-1212. Barnett thought the slow invoices was related to a process problem. Barnett stated that Sudomir never sexually harassed her, that Sudomir never made sexual advancements or ever asked her out for date.

EMPLOYEE INTERVIEWS AND WRITTEN STATEMENTS

24. Additional one on one interviews were held with certain warehouse employees. At those meetings, specific occurrences cited by these employees in prior interview with the Salaried Personnel and Training Manager were reviewed and written statements were provided by the employees regarding some of their experiences (see attachments). In addition to specific questions, the employees were given an open agenda to discuss any issue of interest or concern.

MANUELA BARRON, DISTRIBUTION SPECIALIST A

25. Reluctant to discuss issues with PTPD representatives. There is very little trust Company management. She has been with the Company for six (6) years and like others in the office needs her job. She feels her job is at risk. Hence, very caution in discussions in an effort to protect her position.

26. She feels she is black balled by management. Believes early in her career she was assessed to have a weakness in getting along with others. This reputation involving Mexican Nationals has followed her throughout her tenure and she believes limits her

opportunities. Manuela stated that this was an unfair assessment and that management has not allowed her the opportunity to change this reputation acquired very early in her Ford career.

27. Manuela stated that there is a general attitude by local management that the Mexican Nationals are too stupid to learn. That these employees do not have potential to MR because of Nationality. She suggests that this attitude affects U.S. Hispanics as well.

28. Sudomir treated women as unreliable and thus not considered for other opportunities. He tended to give just secretarial work to the women.

29. Sudomir would stand very close to women. He would at times stand directly behind women and put his arm around our shoulders. Sudomir would use these positions as a means to intimidate women in the work force.

30. Sudomir would grab his genital area in front of women. At times he would do this standing very close. Sudomir did not do this around Gantkessy or the other men in the office.

31. Manuela indicated that she and the others did not go to Darin or other management representatives because of a feeling that management is infallible. Powers is not trustworthy regarding any statements in reference to Sudomir. Also, there is a general feeling that nothing would be done, and one would be left to face the wrath of local management. Sudomir's abusive behavior has been tolerated by local management. She did not believe it would be taken seriously if she complained, There is no trust or integrity in the system. Management is a very tight click in El Paso. What chance do you have against management?

32. Sudomir is a very vindictive sort of person. He has stated on several occasions that he would get even with someone. For example, Sudomir said he likes to keep the score even regarding his ex-wife. He has never become physically abusive with people. But, he has a very bad temper, frequently blows up and screams at people.

BEVERLY ENRIQUEZ DISTRIBUTION SPECIALIST A

33. He always threatened us with statements such as, I will always win. No one will get over on me.

34. Sudomir on numerous occasions asked Beverly out prior to becoming the supervisor at the warehouse. On one occasion she specifically asked him to stop asking her out for dates. Sudomir responded that one day she may work for him. A few weeks later Sudomir became the supervisor of the warehouse.

35. Beverly stated that Sudomir would stand very close to her and rub his genitals. She and other women in the work unit went to Gantkessy, but nothing changed. Asked why she did not go to upper levels of management she responded as follows: Beverly said she had gone to Powers in the past on other issues and her experiences were not positive. She gave an example of this experience. Beverly was late receiving a check. She told Sudomir about her late check, but he was not taking the initiative to obtain the check. She than [sic] went to Mr. Card, stating that her check did not show up and no one was helping her in this regard. Card went to Powers. Powers was able to obtain the check. Powers responded by throwing the check at Beverly, stating that she did not deserve the pay. Beverly went to Card again to discuss Powers behavior. She said, Powers apologized, but he and Sudomir has made her life hell! "Now, I was suppose to go to Powers for help? Gantkessy was the only avenue to attempt to voice concerns and disagreements. But, Sudomir and Powers cut him off.

36. Sudomir was constantly screaming at Beverly. Beverly went on sick leave and suggests it was the result of stress caused by Sudomir. She lost 25 pounds in one month.

37. Beverly became ill as a result of a social disease. Sudomir found out what the ailment was and told the other employees in the office. Berverly was off work for only two days, but on her return everyone already knew why she was off work. "They

made me ashamed of myself!"

38. Beverly became pregnant and went to tell Sudomir. Beverly asked that Sudomir not tell the other employees, that she would tell the other employees at a later date. Manuela was waiting to see Sudomir when Beverly left his office. Sudomir said, oh know not another one. You Know where the coat hanger is.

39. Beverly indicated that the sexual harassment continued until she became pregnant. Sudomir than began to turn his attention to Gracie. Grace is a supplemental employee who was unwilling to discuss her experiences.

40. Beverly was approximately 7 months pregnant in August of 1990. The air conditioning in the office was not working. The office was always warm and very hot in the afternoons. At times the temperatures were over 100 degrees. Beverly asked Sudomir to have the air conditioner repaired. He responded, "Ford does not have to provide an air conditioner for you." Beverly indicated that as a result of the working conditions she became very dehydrated and was hospitalized for a period and was on sick leave for the remainder of her pregnancy.

41. Beverly indicated that most of the employees are working 10 - 12 hours per day. They are paid for 8 or 9 hours a day. Sudomir stated that employees must work this amount of casual overtime during the week or they will not be schedule to work Saturday's. Beverly said the only time they were paid overtime was when Labadie was working out of their general office area.

42. Sudomir often referred to Mexican Nationals in a derogatory fashion.
would make reference to the Nationals as stupid and uneducable.

43. Beverly indicated that if Sudomir became angry with a supplier he would purposely slow down the payment on invoices. She personally witnessed Sudomir become angry with Burlington, TSI and Rasmark in which he instructed her not to pay the invoices. On

one occasion Sudomir took the invoice off Beverly's desk so she could not make payment.

44. Beverly discussed how Sudomir was very abusive to his employees. Sudomir would not allow the employees to laugh. If Sudomir heard people laughing in the office, he would come out of his office, scream at the employees stating that there was "too much bull shit going on around here."

45. Beverly stated that she or other employees could not go to Sudomir with an issue or problem. Sudomir's patented response was, "your not here to think, you do what I tell you to do." "And, don't go to Gantkessy for answers because he is a f_____ idiot." On one occasion Beverly went to Sudomir to indicate that some suppliers were being double paid. Sudomir responded again that she was not here to think, but do as he instructed her. Sudomir removed her computer access so she would not be able to detect other double payments.

ANDY GANTKESSV, TRAFFIC REPRESENTATIVE

46. Gantkessy stated that on several occasions in October and November 1991, Sudomir discussed the possibility that he might leave the Company. Sudomir indicated that Powers had given him full authority to select the cartage (warehousing and switching) company for the new warehouse. Sudomir said he was considering leaving Ford and going to work for Stagecoach. He said he would award the cartage contract to Stagecoach. Sudomir told Gantkessy that Sudomir would need be a silent partner for six months before showing his name as part owner. Sudomir told Gantkessy that he had discussed the six month wait issue with Powers.

47. During November 1991, Sudomir talked to Gantkessy about the amount of business the warehouse was doing with Rasmark. Sudomir said, "do you know how much money Rasmark is making off these charters?" He said we could be treated like kings by Rasmark. Sudomir indicated that Rasmark would fly us to Las Vegas

and other places. Sudomir also discussed the possibility of raising tariffs and receive a kick-back from Rasmark. Sudomir said we could do this with trucking companies as well. Gantkessy stated, that his replied that the Company would not pay increased tariffs with these firms. Sudomir's response was that there is way to get around Company procedures.

48. Gantkessy stated that Sudomir tried to do everyone's job. He would not allow people to do their job's, which created a great deal of stress. Sudomir was very abusive of his employees. He often boasted that Powers gave him full authority to hire and fire. Sudomir used this boast to threaten employees and to force the employees to yield to his commands. Gantkessy stated that some of the women in the office came to him to complain about Sudomir rubbing his genitals in front of the women. Gantkessy stated that he had observed Sudomir "playing with himself in front of the women on several occasions." When Gantkessy broached the issue with Sudomir, his response was, "f_____ them, they know what it is there for. If they don' t like it, have them come to me."

49. Gantkessy indicated that he witnessed a conversation Sudomir had with Roxanne (former hispanic/female warehouse employee). Sudomir stated that all those f_____ Hispanics are stupid. She said "Joe, you always pick on me and call me stupid. Gantkessy stated that Sudomir did always pick on Roxanne. Gantkessy suggested that Sudomir was intimidate[d] by Roxanne because she had a degree in a related field of study.

50. Gantkessy said that Sudomir had a long history of yelling, screaming and belittling employees in front of others.

/s/ Phil Asiala

[See TAOP at App. 208, ¶ 322-334]

[Paragraph numbers added to text]

EXCERPTS FROM DEPARTMENT OF THE TREASURY INTERNAL REVENUE SERVICE CRIMINAL INVESTIGATION, CONTINUING PROFESSIONAL EDUCATION, STUDENT TEXT

1. " . . . are part of an approved information-gathering project need not be notified. Obtain the information about these taxpayers from authorized third parties without first soliciting information directly from the taxpayer or representative. See IRM 9311.3(2)(a-i)

2. Caution should also be exercised in your investigations to see that your disclosures are only for the purpose of obtaining information necessary to your case. You should not merely give information to the recipient or merely speculate or indulge in idle rumor or discuss the taxpayer's affairs. In the 1981 decision Jimmie D. and Cher I Robers and Jim's Water Service, Inc. v Larry - Hyatt 697 F2d 899 (10th Cir) , the jury found that Mr. Hyatt repeated rumors that went beyond the disclosures necessary to the investigation.

3. A final word on investigative disclosures involves the use by the recipient of any information you disclose in the course of your investigation. There is no restriction on further disclosure by the witness or recipient. This can have severe repercussions in sensitive cases. So remember to limit your investigative disclosures to the extent necessary to conduct a proper investigation."

[Training 4160-29 (10-88) TPDS 88520]

[End of Excerpts]

[See TAOP at App. 202, ¶ ¶ 306-320]

EXCERPTS FROM RECEIPT #: A66441
DATE: 10-25-92
THE TOY STORE

Handwritten Note on Receipt: "Due to Debra For Loreta Gantkessy"

Cashier: 68 Time: 13:18

Sales Person: 68 Kathy

Trans Type: 01 Sale

How Paid: 01 Cash

SKU	Descrip	QTY	Amount
03-107	Lying Lione	1	99.00
	Tax		6.93
	Total		105.93

[End of Excerpts]

EXCERPTS FROM MASTERCARD GOLD STATEMENT TO RASMARK JET CHARTER, INC.

El Paso State Bank

114 E San Antonio St
El Paso, TX 79901

Account Number 5437 7533
6003 4306

Payment Due Date: 02/05/93

Rasmark Jet Charter Inc.
6825 Convair
El Paso TX 79925-1059

Transaction Date	Description of New Activity	Posting Date	Amount
12-23-92	Slip No 0000200392840 Jazz Hair & Nail	01-05-93	$200.30

[Handwritten Note: Loretta Gantkessy]

[End of Excerpts]

EXCERPT: SUMMARY OF CORPORATE CARD ACCOUNT, AMERICAN EXPRESS

Deborah M. Rasmusson
Rasmark Jet Charter
6805 Boeing Drive
El Paso, TX 79925-1105

Corporate Account Number: 3782-046130-13004

Reference Number	Item Number	Description of Monthly Activity	Charges
501078	7	Buning The Florist #Miami, FL 000084803 Flowers/Plants/Gifts 03/18/93	$ 59.54
501078	8	L.A. Roses Century City CA 40001499 Flowers/Plants/Gifts 03/18/93	$120.97

[Handwritten Note: " Andy"]

EXCERPTS FROM RASMARK'S AIR CARRIER CERTIFICATE

AIR CARRIER CERTIFICATE

This certifies that

RASMARK JET CHARTER,.INC.
6825 CONVAIR ROAD
EL PASO INTERNATIONAL AIRPORT
EL PASO, TEXAS 79925

has met the requirements of the Federal Aviation Act of 1958, as amended, and the rules, regulations, and standards prescribed thereunder for the issuance of this certificate and is hereby authorized to operate as. an air carrier and conduct common carriage operations in accordance with said Act and the rules, regulations, and standards prescribed thereunder and the terms, conditions, and limitations contained in the approved operations specifications.

This certificate is not transferable and, unless sooner surrendered, suspended, or revoked, shall continue in effect indefinitely.

By Direction of the Administrator

Certificate number JOGA28OF /s/ Richard W. Blondefield
(Signature)

Effective date: FEBRUARY 1, 1987 MANAGER
(Title)

Issued at: SW-01 SOUTHWEST REGION, FSDO-01
(Region/Office)

REISSUED: JULY 20,1989
FAA Form 8430-18 (6-87)

[End of Excerpts]

EXCERPTS OF SOUTHWESTERN BELL YELLOW PAGES DIRECTORY ADVERTISING INVOICE

TEL NO: 915-772-4616
ACCOUNT NO: 503-3638-110
DIRECTORY ADVERTISING INVOICE BILL
DATE: JAN 29 1990

PAGE I OF 1

Date	ACTIVITY	Amount
12- 9	Previous Total Balance	604.78
1- 4	Payment	604.78CR
	Total Balance	0.00

PRESENT ADVERTISING INFORMATION

Directory	Date of	Remaining Installments	Remaining Balance
EL PASO	APR 1989	2	403.18

No payment due> $0.00

Thank you for advertising in The Southwestern Bell Yellow Pages

[End of Excerpts]

EXCERPTS FROM LETTER FROM EL PASO CHAMBER OF COMMERCE BLDG.

EL PAS0 INTERNATIONAL
AMIGO
AIRSHO

March 1, 1990

Mark Rasmusson
Rasmark
6825 Convair
El Paso, TX 79925

Dear Mark:

The 1990 El Paso International Amigo Airsho is celebrating its 10th Anniversary, October 12, 13, and 14th. This year's "Circus in the Sky" will feature a Friday Twilight Sho with Warbirds and a Fireworks Finale. The Canadian Snowbirds Jet Team, along with civilian and military performers, will highlight our Saturday and Sunday Sho.

The Amigo Airsho is a non-profit organization promoting aviation's history, accomplishments and goals. The Amigo Airshols goal is to raise funds for charitable organizations and bring recognition to the greater El Paso Metroplex by attracting over 75,000 enthusiasts from El Paso, Mexico, Las Cruces and surrounding areas. In an all-volunteer effort of more than 1500 people, the Amigo Airsho has donated over $325,000 to hundreds of local charities and civic organizations.

We would like to request your aircraft for static display in the 1990 Amigo Airsho. Aircraft are displayed within the secured parameters of

Biggs Army Airfield, a base used regularly by a full spectrum of military aircraft. ...

Sincerely,

/s/ Rose Harris
Office Manager

/s/ Holli Ball
Administrative Assistant

[End of Excerpts]

EXCERPTS FROM CERTIFICATE OF APPRECIATION

THE AMIGO
AIRSHO

In celebrating our
"Tenth Year in the Clouds"
the Amigo Airsho extends sincere gratitude to

RASMARK JET CHARTER

for your generous support in helping to make our dream become a reality!

Presented this 18th day of May, 1990
at the ten year Birthday Celebration at Biggs Army Airfield

[End of Excerpts]

EXCERPTS FROM LETTER OF APPRECIATION CHILDREN'S MIRACLE NETWORK TELETHON PROVIDENCE MEMORIAL HOSPITAL

September 5, 1990

Debra M. Rasmusson
Vice President Manager
RASMARK Jet Charter, Inc
6825 Convair Road
El Paso, Texas 79925

Dear Debra,

I want to thank you for your wonderful donation for the Gold Rush Gala for our Providence Memorial Foundation.

Judy Clabaugh with Chloee's Restaurant at Embassy Suites has been a wonderful volunteer for us for a long time and her help on these special projects is invaluable. I know, also, we can work together on similar projects for Children's Miracle Network.

Let's stay in touch and we'll plan something for the Telethon next June.

Sincerely,

/s/ Barbara J. Higgins

Children's Miracle Network
Telethon Coordinator

[End of Excerpts]

EXCERPTS FROM RASMARK'S LETTER TO PROVIDENCE MEMORIAL FOUNDATION

Dear Gentlemen:

Please find enclosed, Check No. 2862, in the amount of $3,300.00, as payment on Pledge No. 126.

We would like to thank you, for your generous invitation, to attend this years fund raising event, Gold Rush 190.

We enjoyed ourselves immensely, and appreciated the opportunity you gave us to purchase the Vacation Package to Alaska.

It was the perfect occasion, to not only enjoy ourselves, but also make a difference in El Paso's community. ...

/s/ Mark & Debra Rasmusson
Owners - Rasmark Jet

[End of Excerpts]

EXCERPTS FROM LETTER OF APPRECIATION PROVIDENCE MEMORIAL FOUNDATION

December 17, 1990

Debra & Mark Rasmussen [sic]
Rasmark Jet Charter, Inc.
6825 Convair Road
El Paso, Texas 79902

Dear Debra & Mark:

Please accept my personal "Thanks"for your most generous gift of the wonderful trip to San Diego, given in support of our first charity dinner/auction entitled "Gold Rush '90". As you know, this was the first major fund raising, event to benefit Providence Memorial Hospital under the newly established Foundation. Your generous support made this event a wonderful success. . . .

Your Friend,

/s/ James M. Peak
President

[End of Excerpts]

LETTER OF APPRECIATION
CHILDREN'S MIRACLE NETWORK TELETHON

June 14, 1991

Debra Rasmusson
Rasmark Jet Charter
6825 Convair Road
El Paso Int'l Airport
El Paso, TX 79925

Dear Debra:

Thank you so much for your most generous donation to Providence Memorial Hospital who sponsors the Children's Miracle Network Telethon. This is a not-for-profit organization supported by grants and funds received from private and public organizations. It helps serve children in our Pediatric Oncology Unit, Pediatric Intensive Care Unit, Intensive Care Nursery, as well as the Border Children's Health Center. Children come from, El Paso, surrounding communities, southern New Mexico and northern Mexico.

This letter gratefully acknowledges your $500 donation to Providence Memorial Hospital for the benefit of the Children's Miracle Network Telethon. Thanks to generous supporters as yourself, El Paso raised over $401,000.00 during for the 1991 telethon.

Again, thank you for your overwheln-Ang support. We look forward to working with you in the future.

Sincerely,

/s/Barbara J. Higgins
Telethon Coordinator

EXCERPTS FROM LETTER OF APPRECIATION PROVIDENCE MEMORIAL FOUNDATION

September 16, 1991

Mark and Deb Rassmusen [sic]
Rasmark Jet Charter, Inc.
6825 Convair Rd.
El Paso, TX 79925

Dear Mark and Deb,

On, behalf of Providence Memorial Foundation and the Gold Rush Guild, I would like to express our heartfelt appreciation for your generous gift of the trip for six to Las Vegas to be used for Gold Rush '91. Because of friends such as you, last year's gala netted more than $72,000 in cash and gifts-in-kind for the benefit of Providence Memorial Hospital. . . .

Sincerely

/s/ Bettie P. Beckworth
Director for Annual Giving and Special Events

[End of Excerpts]

[See TAOP, at App. 938, ¶ 106(7); App. 944, ¶ 119]

EXCERPTS FROM ORDER IN DIVORCE MATTER DIVIDING PROPERTY, LIABILITIES AND APPOINTING CPA ANDREW HADDAD

IN THE DISTRICT COURT OF EL PASO COUNTY, TEXAS
171ST JUDICIAL DISTRICT

IN THE MATTER OF	*	
THE MARRIAGE OF:	*	
	*	
DEBORAH LYNN RASMUSSON	*	Cause No. 93-2717
	*	
AND	*	
	*	
MARK, B. RASMUSSON	*	
INDIVDUALLY AND	*	
RASMARK JET CHARTER, INC.	*	

ORDER

On October 15, 1993 and October 22, 1993, came on to be heard the Motion for Enforcement and Order to Appear filed by Petitioner herein, DEBORAH LYNN RASMUSSON, and further came on to be heard the Motion for Enforcement and order to Appear filed by Respondent herein, MARK B. RASMUSSON. . . .

4. Monthly Compensation to be Paid to--Petitioner and Respondent by RASMARK JET CHARTER, INC.

The Court having heretofore found that Petitioner and Respondent are the owners of one hundred percent (100%) of the stock issued by RASMARK JET CHARTER, INC., and having further found that the parties have stipulated and agreed to the following order; IT IS THEREFORE ORDERED that:

1. DEBORAH LYNN RASMUSSON and MARK B. RASMUSSON shall each receive f rom RASMARK JET CHARTER, INC. the net (after Federal Income Tax and FICA withholding) sum of NINE THOUSAND FIVE HUNDRED AND No/100 DOLLARS ($9,500.00) per month, payable in two equal monthly installments of FOUR THOUSAND SEVEN HUNDRED FIFTY AND No/100 DOLLARS ($4,750.00) each, with the first payment being due and payable on the first payday at RASMARK JET CHARTER, INC. after November 1, 1993, and a like payment being due and payable on each and every payday thereafter until further order of the Court. The term "payday", as used herein, shall mean the regularly scheduled payday for the employees of RASMARK JET CHARTER, INC. which occur not less than two times each calendar month on the first and third Mondays of each calendar month. In the event that there are not sufficient funds on hand in the account or accounts of RASMARK JET CHARTER, INC. on any given payday in order to pay the parties' compensation as ordered hereinabove, then in such event Mr. Andrew Haddad, CPA, shall determine the sum to be paid to the parties, but in no event shall either party be paid less than the other. If the parties are paid a reduced amount on any given payday, at such time thereafter when Mr. Andrew Haddad, CPA, shall determine that RASMARK JET CHARTER, INC. can pay the parties the difference between the reduced amount received by them and the amount ordered to be paid to them, Andrew Haddad shall issue additional checks payable to the parties in equal sums and in an amount necessary to bring current any arrearage due and owing by RASMARK JET CHARTER, INC. to the parties as per the terms of this Order.

2. On each payday at RASMARK JET CHARTER, INC. subsequent to November 1, 1993, Mr. Andrew Haddad, CPA, will issue checks to Petitioner and Respondent in the sums above ordered and deliver or cause to be delivered each of said checks to the party entitled thereto.

3. Neither Petitioner or Respondent shall receive any compensation from RASMARK JET CHARTER, INC. in excess of the sum of NINE THOUSAND FIVE HUNDRED AND NO/100 DOLLARS ($9,500.00) hereinabove ordered to be paid to Petitioner and

to Respondent each month, nor shall Petitioner or Respondent utilize any assets belonging to RASMARK JET CHARTER, INC. for personal purposes or benefit.

4. Petitioner, DEBORAH L. RASMUSSON, and Respondent, MARK B. RASMUSSON, are specifically ordered not to use RASMARK JET CHARTER, INC. credit cards or other credit of RASMARK JET CHARTER, INC. for any personal expense or benefit. The credit of RASMARK JET CHARTER, INC. shall be utilized only for ordinary necessary business expenses.

5. **Payment of Liabilities.**

IT IS ORDERED that DEBORAH LYNN RASMUSSON shall be responsible for the timely payment of the following:

1. The monthly payment, including principal, interest, tax and insurance, due and owing on or secured by a lien on 11157 Leo Collins, El Paso, Texas.

2. The monthly payment secured by a lien on the 1989 Mercedes Benz motor vehicle in the possession of Petitioner.

3. The monthly payment secured by a lien on the 1992 Mercury motor vehicle in the possession of Petitioner.

4. All debts and liabilities incurred by DEBORAH LYNN RASMUSSON subsequent to the filing of this cause, unless express provision is made herein to the contrary.

IT IS FURTHER ORDERED that MARK B. RASMUSSON shall be responsible for the timely payment of the following:

1. The monthly payment due and owing on or secured by a lien on the two parcels of real property located in the State of Colorado.

2. Any and all debts and liabilities incurred by Respondent

subsequent to the date of the filing of this cause, unless express provision is made herein to the contrary.

3. In the event that Any sum shall become due and payable on the real property of the parties located in San Carlos, Mexico, MARK B. RASMUSSON shall, within three (3) days of receipt of notice by him that a sum or sums are due and owing on the San Carlos, Mexico property, give written notice by certified mail, return receipt requested, of the amount due and the date when due to DEBORAH LYNN RASMUSSON and her attorney, James R. Dallas.

IT IS ORDERED AND DECREED that each party shall insure, at his or her own expense, any motor vehicle ordered to be in his or her exclusive possession. IT IS ORDERED that such insurance shall provide the same or greater coverage than that which was provided by the policy now or most recently in effect.

6. **Appointment of Andrew Haddad, CPA.**

The Court, having found that the parties have stipulated and agreed to the following order, hereby orders that Mr. Andrew Haddad, CPA, beginning October 22, 1993 at 10:00 a.m., shall receipt and account f or any and all receivables, regardless of the source or nature thereof, thereafter received by CHARTER, INC. and shall write all checks for all disbursements to be made from the account or accounts of RASMARK JET CHARTER, INC. In addition thereto, IT IS ORDERED that Andrew Haddad, CPA, will prepare a written report of all receipts and disbursements of RASMARK JET CHARTER, INC. each week, and such report shall be made available to Petitioner and to Respondent weekly. IT IS FURTHER ORDERED that Petitioner and Respondent will execute any and all documents necessary to empower Andrew Haddad to perform the duties described hereinabove including but not limited to the execution of a corporate resolution to remove the current signatories on all corporate accounts and to replace said signatories on all corporate accounts with Mr. Andrew Haddad. Nothing contained in this order is intended to or shall be construed as requiring RASMARK JET CHARTER, INC. to exclusively utilize the services of

Mr. Andrew Haddad, CPA for other accounting services to be hereafter provided such corporation. . . .

10. **Property and Exchange of Property.**

The Court finds that the following orders respecting theproperty and parties are necessary and equitable.

IT IS ORDERED that Petitioner have the exclusive and private use and possession of the following property during. the pendency of this suit:

1. The residence located at 11157 Leo Collins, El Paso, Texas, together with all furniture, furnishings, fixtures, household goods, and equipment located therein which are not hereinafter specifically awarded to Respondent.

2. The 1989 Mercedes Benz motor vehicle.

3. All of Petitioner's clothing, jewelry and personal effects.

4. One (1) 1992 Sea Doos Jet Ski.

5. One (1) 1990 Mock One Snowmobile.

6. One (1) 1992 Mercury motor vehicle.

7. one (1) "Akita" dog with pinto markings.

8. Petitioner's clothing, jewelry, and personal effects at Eagle Storage, Unit No.. 16, Eagle, Colorado.

9. Petitioner's fishing equipment, diving equipment, clothing and personal effects located at the residence of the parties in San Carlos, Mexico.

IT IS ORDERED that Respondent have the exclusive and

private use and possession of the following property during the pendency of this suit:

1. The residence located at 1611 Dale Douglas, El Paso, Texas, together with all furniture, furnishings, fixtures, household goods, and equipment located therein which are not hereinafter specifically awarded to Petitioner.

2. The all furniture, furnishings, fixtures and equipment located therein which is not awarded to Petitioner hereinabove.

3. That certain real property located in San Carlos, Mexico which is improved with a residential structure, together with all furniture, furnishings, fixtures and equipment located therein which is not awarded to Petitioner hereinabove.

4. All of Respondent's clothing, jewelry and personal effects.

5. The following items of personal property located at 11157. Leo Collins, El Paso, Texas:

(a) Respondent's clothing, jewelry and personal effects.

(b) The sunroom furniture located in the sunroom.

(c) The .9 mm pistol, shotgun, .44 caliber pistol, and AR-15 rifle.

(d) The Snap-on tool cabinet.

(e) The black lacquer bedroom set (with sheets, blanket and pillow) located in the guest bedroom.

(f) The kitchen table with four chairs.

(g) A portion of the kitchen equipment, being dishes, pots, pans, and one microwave.

(h) One (1) 25 inch television.

(i) One (1) stereo (being the stereo being connected to the intercom system at 11157 Leo Collins, El Paso, Texas).

(j) One (1) non-laser disk player.

6. One (1) 1991 Kawasaki four wheeler.

7. One (1) 1987 Harley Davidson motorcycle.

8. one (1) 1992 Porsche 930 motor vehicle.

9. 1984 and 1992 Ford Broncos.

10. One (1) 1979 Volkswagen convertible.

11. One (1) GMC one ton truck with camper.

12. Two (2) BMW race cars.

13. One (1) 1985 33' Baylines boat.

14. One (1) 1979 Taylor Craft 18' boat.

15. One (1) 1966 18' Century Resorts boat.

16. One (1) 1992 Sea Doos Jet Ski.

17. One (1) 1992 Arctic Cat Snowmobile.

18. one (1) 1991 Chevrolet Suburban.

19. Remote control airplanes and helicopter.

20. Respondent's golf clubs.

21. Snap-on Tool cabinet . . .

14. **Effect on Prior Orders.**

IT IS ORDERED that all prior orders and injunctions entered in this cause which are not in specific conflict with this additional Temporary order will continue in full force and effect until further order of the Court

SIGNED on the 23rd day of February, 1994.

RECOMMENDED:

/s/
COURT MASTER

/s/ Sam M. Paxson
PRESIDING JUDGE

[See TAOP at App. 137, ¶ 57; App. 149, ¶ 106; App. 155, ¶ 130; App. 169, ¶¶ 188-195]

EXCERPTS FROM USCS EVIDENCE TAG

C 9 SECRETARY'S OFFICE

CHARTER INFO SHEETS

BULLETIN BOARD

CASE:EP02CR90EP0013 - PORTILLO

Seized Under Warrant On 112293
By S/A DANIEL URBINA
At 6805 BOEING DRIVE
In EL PASO, TX <<EVIDENCE TAG>>

[End of Excerpts]

[See TAOP at App. 215, ¶ 357-363]

[Paragraph numbers added to text]

LETTER FROM RASMARK TO USCS REGARDING RETURN OF PROPERTY FEBRUARY 21, 1994

Department of the Treasury
U.S. Customs Service
Larry Frost - Special Agent
9400 Viscount Blvd., Suite 200
El Paso, TX 79925-7060

Dear Mr. Frost,

1. As per your conversation with Mrs. Sanchez, we are formally requesting the hi-lighted referenced items on the inventory list.

2. Items hi-lighted in blue are requested by the Bookkeeper. These items are urgently [emphasis in original] needed, being that she is working on the year end closing. She is also requesting some old material because she is having problems collecting from our customers.

3. Items hi-lighted in yellow are being requested by the Director of Maintenance. As you may be aware the FAA requires that we have them in our possession and up-to-date.

4. Items in orange are being requested by our Chief Pilot. These records are essential for daily operations. We are required by the FAA to have them on hand.

5. The items hi-lighted in pink are being requested by our Secretary. The WordPerfect 6.0 diskettes are needed to re-install the program in the computer. The information in the rolodexes is nearly impossible to replace and desperately needed.

6. Thank you, for your prompt attention to this matter. Do not hesitate to call if you have any questions. Should you require our runner to pick-up the requested materials please give us a call and we will send someone immediately.

Yours truly,

/s/ Mark B. Rasmusson
President

MBR/ecv

encl

[See TAOP at App. 215, ¶ 357-363]

[Paragraph numbers added to text]

LETTER FROM RASMARK TO USCS REGARDING RETURN OF PROPERTY JUNE 8, 1994

Department of Treasury
U.S. Customs Service
Larry Frost - Special Agent
9400 Viscount Blvd. Suite 200
El Paso, Texas 79925-7060

Dear Mr. Frost:

1. As per my recent telephone conversation with you, we are formally requesting the original or copies of the original documents listed below and referenced to your inventory list which is also enclosed with the requested items and highlighted for clarification.

2. The items that are being requested are requested by the Aircraft Maintenance Manager, for Rasmark Jet Charter, Inc. As you may be aware, The Federal Aviation Administration requires that these... documents, aircraft and aircraft engine logbooks, be in our possession and be updated on a regular basis. These logbooks are ESSENTIAL in tracking hour and cycle limited components, as well as the inspection status. The documents requested are the only records that exist and cannot be replaced.

3. Thank you for your assistance in this matter. Do not hesitate to call if you [have any questions or if I can be of any help in identifying, copying or in any other way, please contact me. Should you

require us to pick up the requested materials, we will send someone immediately.

Yours truly,

/s/ Mark Rasmuson
President

/s/ Larry L. Vaughan
Aircraft Maintenance Manager

[Page two]

DOCUMENTS REQUESTED
BY ROOM AND ITEM NUMBER

Room	Number	
A	8	Aircraft Service records
B	2	N513T Maintenance records
B	3	Maintenance/Repair records
E	1	N513T #10 logbooks
E	2	N513T #7 logbooks
E	3	N513T #9 logbooks
E	4	N513T #11 logbooks
E	5	N513T Current logs
E	6	N513T #8 logbooks
E	7	Maintenance data

4. The following items are not specificaly identified in the inventory, but may be included in the unspecific entrees [sic] such as:

Entry: A-8 "aircraft service records"
B-3 "maintenance/repair records" or
E-7 "maintenance data".

5. If they are not, the following documents are also requested:

Aircraft engine log books or service records for General .Electric CJ 610-6 Turbo Jet.Engines:

251-298A	251-254A
251-745A	241C-162A

Airframe Log Books for the following aircraft:

DA-20 (Falcon 20) SN.123 Log Books #1 through #6
LR-25C (Learjet 25C) SN.129 Log Books #1 through current

[See TAOP at App. 215, ¶ 357-363]

[Paragraph numbers added to text]

LETTER FROM RASMARK TO USCS REGARDING RETURN OF PROPERTY AUGUST 23, 1994

Department of the Treasury
U.S. Customs Service
Larry Frost - Special Agent
9400 Viscount Blvd., Suite 200
El Paso, TX 79925-7060

Dear Mr. Frost:

We are formally requesting the original or copies of the original documents listed, and referenced to your inventory list which is also enclosed with the requested items and highlighted for clarification. Thank you for your assistance in this matter. Please do not hesitate to call if you have any questions, or if I can be of any assistance in identifying, copying or in any other way. Should you require us to pick up the requested materials, we will send someone to your office immediately.

Yours truly,

/s/ Mark B. Rasmusson
President

[Page two]

DOCUMENTS REQUESTED BY ROOM AND ITEM NUMBER

Room	Number	Description	Room
A	5	FLIGHT LOGS	MARK
A	6	EL PASO STATE BANK RECORDS	MARK
A	8	AIRCRAFT SERVICE RECORDS	MARK
A	50	EL PASO STATE BANK FILE	MARK
B	2	N513T MAINTENANCE RECORD	MARK
B	36	VEHICLE REGISTRATION	MARK
B	38	AIRCRAFT REGISTRATION FILES	MARK
B	45	AIRCRAFT REGISTRATIONS	MARK
B	49	ROLODEX	MARK
C	19	WP 5.1 & WP 6 DISKETTES	SECRETARY

C	29		LOTUS BANK RECORD BACKUP FILES	SECRETARY
C		30	PEACHTREE FILES	BOOKKEEPER
D	1		ACCOUNTS RECEIVABLE	BOOKKEEPER
THROUGH				
D		23	ACCOUNTS RECEIVABLE	

[See TAOP at App. 215, ¶ 357-363]

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

RASMARK JET CHARTER, INC., DEBORAH LYNN RASMUSSON and MARK B. RASMUSSON,	*	FILED: APRIL 25, 1995
Plaintiffs,	*	
Vs.	*	Cause Nos.: 93-124OR-01 and 93-124IR-01
UNITED STATES OF AMERICA,	*	
Defendant.	*	

MOTION FOR RETURN OF PROPERTY

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, RASMARK JET CHARTER, INC., a Texas Corporation, DEBORAH LYNN RASMUSSON and MARK B. RASMUSSON, hereinafter collectively called "Movants", and file this joint MOTION FOR RETURN OF PROPERTY and for cause would show the Court as follows:

1. This Motion is filed pursuant to the provisions of Rule 41(e) of the Federal Rules of Criminal Procedure.

2. On or about November, 1993, agents of the United States Government executed Search Warrant Numbers 93-124OR-01 and 93-1241R-01 at the offices of RASMARK JET CHARTER, INC. and the residence of DEBORAH RASMUSSON, both of which locations are in El Paso, El Paso County, Texas. During the course of the search, agents

of the United States Government seized the business and/or business related documents of Movants located at the above described locations in El Paso, Texas.

3. The UNITED STATES OF AMERICA, through its agents have retained custody and control of the aforementioned records and documents continuously since November, 1993, for a period of time in excess of fourteen (14) months. The Government has had ample time to review and examine said records and to determine which if any of said records, they need to retain copies of for any legitimate law enforcement purpose.

4. Individual Movants herein, DEBORAH LYNN RASMUSSON and MARK B. RASMUSSON, would show the Court that in 1993 and prior to the execution of the hereinabove described search warrants by agents of the United States Government, DEBORAH LYNN RASMUSSON filed for divorce in Cause No. 93-2717, styled In the Matter of the Marriage of DEBORAH LYNN RASMUSSON and MARK B. RASMUSSON, Individually, and RASMARK JET CHARTER, INC., which cause is now pending in the 171st Judicial District Court of El Paso County, Texas. DEBORAH LYNN RASMUSSON and MARK B. RASMUSSON would show the Court that complex characterization and valuation issues exist in Cause No. 93-2717 and that a substantial portion of the documents confiscated by the Government in November of 1993 are relevant and material to those issues. Further, said individual Movants would show the Court that confiscation of the above referenced documents by the Government has prevented said parties from proceeding with discovery, settlement negotiations and/or trial preparation in the above referenced divorce case.

5. Movants would show the Court that to date no Movant in this cause has been indicted or otherwise charged with any criminal offense by the UNITED STATES OF AMERICA.

6. In view of the foregoing circumstances, Movants would request that the Court immediately Order that all documents, or in the alternative, copies of all documents confiscated pursuant to the

hereinabove described search warrant be forthwith returned to the rightful possession of Movants.

Respectfully submitted,

/s/ James R. Dallas
LIPSON, DALLAS & WEISER, P.C.
Attorney for DEBORAH LYNN RASMUSSON

NO CONTEST:

/s/ DAVID R. ROSADO
Assistant U. S. Attorney

/s/ John Bright
ANDERSON, ANDERSON & BRIGHT
Attorney for MARK B. RASMUSSON

[See TAOP at App. 215, ¶ 357-363]

FILED
May 2, 1995

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

RASMARK JET CHARTER, INC., DEBORAH LYNN RASMUSSON and MARK B. RASMUSSON,	)	
Plaintiffs,	)	
V.	)	No. 93-124OR-01 and 93-1241R-01
UNITED STATES OF AMERICA,	)	
Defendant.	)	

ORDER

On this date came on to be considered the Motion for Return of Property filed by Movants, RASMARK JET CHARTER, INC., DEBORAH LYNN RASMUSSON, and MARK B. RASMUSSON. Assistant United States Attorney David R. Rosado does not contest the Motion, as indicated by his signature on page 3 of the Motion., After telephone conversations with AUSA Rosado and Movants' attorney, James R. Dallas, the court finds that the following order should be entered.

It is therefore ORDERED that, no later than May 16, 1995 at 5:00 p.m., Mr. James R. Dallas, or his agents, shall pick up all documents seized by United States Customs agents pursuant to Search Warrants with Magistrate numbers 93-124OR-01 and 93-1241R-01 at the following two locations: (1) 9400 Viscount, Suite 200, El Paso,

Texas 79925; and (2) the Paso Del Norte Port of Entry in El Paso, Texas.

SIGNED and ENTERED this 2nd day of May, 1995.

/s/ JANET RUESCH
United States Magistrate Judge

[See TAOP at App. 195, ¶ 280]

EXCERPTS FROM REDACTED
USCS REPORT NO. 062

REQUESTED BY: BRAZELL, BRUCE M

OFFICIAL USE ONLY

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE
REPORT OF INVESTIGATION

1. **[redacted: 7E]**

2. PAGE 1

3. CASE NUMBER
OCDETF NO: **[redacted: 7E]**

4. TITLE: GUILLERMO PORTILLO

5. CASE STATUS: INTERIM RPT

6. REPORT DATE
[redacted: 7E]

7. DATE ASSIGNED
[redacted: 7E]

8. CLASS
[redacted: 7E]

9. PROGRAM CODE
[redacted: 7E]

10. REPORT NO.
[redacted: 7E]

11. RELATED CASE NUMBERS: [blank]

12. COLLATERAL REG: [blank]

13. TYPE OF REPORT: **[redacted: 6]**

TOPIC: INTERVIEW OF **[redacted: 6]**

14. SYNOPSIS: On March 1, 1993, **[redacted: 6, 7E]** interviewed **[redacted: 6, 7E]** is assigned to the El Paso International Airport and observed activity in the area of RASMARK Jet charter.

15. DISTRIBUTION:
[redacted: 7E]

16. SIGNATURE: [blank]
[redacted: 6]
SPEC AGENT

17. APPROVED: [blank]
[redacted: 6]
OE GRP SUPERVISOR

18. ORIGIN OFFICE:
[redacted: 7E]

19. TELEPHONE: **[redacted: 6]**

20. TYPIST: **[redacted: 6]**

OFFICIAL USE ONLY

THIS DOCUMENT IS LOANED TO YOU FOR OFFICIAL USE ONLY AND REMAINS THE PROPERTY OF THE US CUSTOMS

SERVICE. ANY FURTHER REQUEST FOR DISCLOSURE OF THIS DOCUMENT OR INFORMATION CONTAINED HEREIN SHOULD BE REFERRED TO HEADQUARTERS, US CUSTOMS SERVICE TOGETHER WITH A COPY OF THE DOCUMENT.

[Paragraph numbers added to text]

DETAILS OF INTERVIEW:

1. On March 1, 1993, **[redacted: 6]** provided the following statement **[redacted: 6]**in regards to activities around RASMARK Jet Charter:

2. On July 13, 1992 **[redacted: 6]**was working the 2300 to 0700 hrs. shift at the El Paso International Airport. **[redacted: 6]** stated that at I:25 AM he was sent to Sate 62 (T-hangar area) because a vehicle was blocking the gate. When he arrived at the gate **[redacted: 6]** stated that he found a large yellow truck with Chihuahua plates stopped at the gate. **[redacted: 6]** further stated that the truck was occupied by **[redacted: 6, 7E]**. The two men told **[redacted: 6]** they needed in the gate to deliver some seat belts to RASMARK Air. **[redacted: 6]** stated that while he was checking on the two men, a vehicle arrived from inside of the airport gate. **[redacted: 6]** stated that the vehicle had come from the area of RASMARK Air and contained two white males. **[redacted: 6]** stated that a blond male exited the vehicle and verified the truck drivers story. The blond male stated he was from RASMARK Air. It was further explained to **[redacted: 6]** that the seat belts were for Ford Motor Company and needed to be flown immediately to Detroit. **[redacted: 6]** stated that he was shown paper work on the seat belts and being satisfied at this point he allowed the truck to enter.

3. **[redacted: 6]** stated that he felt further investigation was needed and drove near some hangars with his lights out and surveilled the Rasmark building. He watched the loading of a Lear Jet and noticed a male subject stationed away from the plane, facing north towards the

airport and another male positioned to face south towards Boeing St.

4. **[redacted: 6]** stated that he took no actions but later reported the matter to **[redacted: 6, 7E]** did note the incident with the truck at the gate, on his log sheet and a copy has been obtained.

[End of Excerpts]

[See TAOP at App. 216, ¶ 365–395]

[Paragraph numbers added to text]

EXCERPTS FROM BLUE RIBBON PANEL REPORT

. . .notwithstanding his poor management in the Southwest region position. How do you explain that?

1. Ms. HALLETT. Mr. Chairman, I think that many times the effectiveness of an employee is based on personalities. I believe that the movement of this particular employee to another location, working with a very strong manager, is in fact exactly what was needed for someone with many years of proven experience in the Customs Service.

2. Mr. BARNARD. Ms. Hallett, I get the impression that your folks cannot do any wrong. Everything is misunderstood, it is innuendo, it is rumor, and the testimony by whistleblowers has no effect at all on the Customs Service. They just seem to be oblivious. I am eager now to let you explain to me what happened Monday in San Antonio and how you are going to explain that away.

3. Ms. HALLETT. Mr. Chairman, I will simply tell you, as I gave you some significant detail yesterday, which obviously I am not going to share--

4. Mr. BARNARD. I am not asking you to do that.

5. Ms. HALLETT. Let me tell you what I did do. There were apparently statements made Monday in the SAC office, in a meeting of all of the employees, which we have referred directly yesterday to the Office of Special Counsel. That is the right place to refer any issues that are of concern, of the nature that we discussed.

6. Mr. BARNARD. Why not the Justice Department?

7. Ms. HALLETT. That would not be the appropriate place.

8. Mr. BARNARD. Oh, absolutely. There is suspicion that there is a violation of title 18 of the United States Code.

9. Ms. HALLETT. The FBI already turned it down, Mr. Chairman.

10. Mr. BARNARD. When?

11. Ms. HALLETT. It was brought to the FBI by the individuals who reported this information.

12. Mr. BARNARD. When?

13. Ms. HALLETT. On Monday. Monday afternoon the FBI turned it down.

14. Mr. BARNARD. That is not the information we heard, but we will follow up on that..

[Subcommittee note: See appendix 10 for correspondence with the FBI.]

15. Ms. HALLETT. I would encourage that.

16. Mr. BARNARD. If nothing has come out of all of these hearings, maybe it is encouraging to know that 2 years ago this would have been whitewashed, too.

17. Ms. HALLETT. Mr. Chairman, within 2 hours after I learned of this, we took immediate action. Customs employees have done things wrong. I have said that before, and I will repeat that. Managers have been punished for their wrongdoing, and they will continue to be punished. We are not, for one moment, trying to insinuate that everyone is perfect, but there are a lot of people who, given an opportunity to work under another manager or to do something in a different area, will in fact be a strong manager, and they will in fact be able to do the job well.

18. Mr. BARNARD. I do not dispute that in any way.

19. Mr. LANE, did the former San Antonio SAC, Mr. Lageman, during 1990 or 1991, ask you for your assistance, help, or intervention in any way?

20. Mr. LANE. I do not think so, Mr. Chairman.

21. Mr. BARNARD. In no way?

22. Mr. LANE. I said I do not think so. I did not talk to Neil Lageman very frequently after his transfer to San Antonio. I saw him maybe three or four times and spoke to him maybe a dozen times since that time. I knew he had significant problems down there. I do not think he ever called upon me to do anything.

23. Mr. BARNARD. I understand it was your decision to recuse yourself from the consideration process of Mr. Lageman. Is that the case?

24. Mr. LANE. Yes, sir.

25. Mr. BARNARD. Is it not also the case that in a meeting with Ms. Hallett in April or May 1991, you did participate, offered opinions in the matter, during those discussions?

26. Mr. LANE. I was at that meeting. I do not think it was a significant meeting. It was just a meeting to exchange information on the background in San Antonio. I did not have a significant role in that meeting.

27. Mr. BARNARD. At that meeting, no decisions were discussed with you about Mr. Lageman?

28. Mr. LANE. Decisions were discussed, and I think I did offer opinions.

29. Mr. BARNARD. So in other words, you did not absolutely

recuse yourself. Why did you want to recuse yourself to begin with?

30. Mr. LANE. I think that the main reason was that people were quite aware of my relationship with Mr. Lageman. I think there would have been a perception that I let him off easy if I were the deciding official.

31. Mr. BARNARD. The severity of his case, that would have been terrible if he had been punished any further than that.

32. Mr. Lane, you state in your testimony that you were shown the April 1990 management report and letters from employees of the San Antonio SAC office about problems within that office and misconduct by Mr. Lageman. You also stated in your testimony that you did not report this information to the inspector general because you believed these allegations were already under investigation by either the inspector general or Internal Affairs. What led you to that conclusion?

33. Mr. LANE. I would be briefed periodically on significant investigations by Internal Affairs.

34. Mr. BARNARD. What about the inspector general? Did they also
brief you?

35. Mr. LANE. No. During that timeframe, I was not receiving briefings from them. I knew from Internal Affairs that there was an investigation on Lageman.

36. Mr. BARNARD. Despite the fact that you believed either the IG or Internal Affairs were investigating these matters, the Treasury's Minimum Standards of Conduct Manual require any Treasury employee who has information indicating that another employee has engaged in criminal conduct or violated the standards of conduct to convey the information to the inspector general or to the appropriate Office of Internal Affairs. Should you not have conveyed these allegations to ensure that they were properly reported and investigated?

37. Mr. LANE. Sir, I had every reason to believe that everything there that should have been under investigation was under investigation. I based that on this. I had been briefed by Internal Affair that there was an investigation on Lageman. Second, I knew that here was a great deal of attention being put on the San Antonio office at that time. It seemed like in San Antonio people were using the system appropriately to bring things to IA and IG attention. Third, I did feel that it was important to act, based on that report and those letters, immediately to do something on the substantive issues regarding Lageman's performance. That is the direction that I took.

38. Mr. BARNARD. Ms. Hallett, what plans were you making to appoint a Blue Ribbon Panel, if at all, before 1991?

39. Ms. HALLETT. In late 1990, Mr. Chairman, we were very concerned about persistent allegations in the press of widespread systemic corruption in southwest Texas. We created a think tank group at Customs that met daily to work on this problem, to try to determine what was going on in that area, whether there was, in fact, systemic corruption, and whether we were overlooking something in that area.

40. It continued to move forward, and in early 1991, the problem continued to become more vocalized in the press. We had contacts from you and your committee staff. During this time, we were meeting on a daily basis. In fact, it included the deputy chief counsel, it included Mr. Lane, it included Ms. Spero, and it included others of considerable stature in the Customs Service, trying to determine what the problems were.

41. I realized, after about mid-February, that we simply were not getting enough done. I came up with the idea to create a Blue Ribbon Panel. I believed also that for a panel to have any credibility, it would have to be made up with a majority of people from outside the Customs Service. So I went to the Department of Justice and asked them if they would suggest a name. They suggested Mr. Warren. None of us had ever heard of Mr. Warren before. I went to the Treasury 'Department. They did the same thing, and they suggested another representative. I went to the former head of GSA and asked for a

recommendation, and they recommended someone I had never heard of. I took those recommendations based on the integrity of the agency or the individuals and asked them to participate.

42. Mr. BARNARD. I guess the main question I have is this: In other words, you had been anticipating for some time the appointment of a Blue Ribbon Panel?

43. Ms. HALLETT. Mr. Chairman, I really first thought that we would be able to resolve the problems and find out what the problems were and get them corrected with our daily think tank group meetings. I just did not believe the problems were as big as they turned out to be. I had already started to take action in that area by making some personnel changes. I was not satisfied with what was going on.

44. Mr. BARNARD. Were you doing that strictly on the basis of press
reports?

45. Ms. HALLETT. Not at all. Those press reports had absolutely nothing whatsoever to do with the personnel changes that I made or the concern I had with what was going on.

46. Mr. BARNARD. From your testimony this morning, though, you indicate to me that none of the accusations that were made had any influence on the decisions of the Customs Service at all. Now you are telling me that it was the press reports that led you to have the concern necessary to eventually set up the Blue Ribbon Panel.

47. Ms. HALLETT. It was not the press reports that did that. It was the press reports that caused me to set up a daily think tank group. Frankly, the previous concerns I had are what caused me to make a change in the Regional Commissioner, believing that it was important to try and get to the bottom of some of the things that were going on.

48. Mr. BARNARD. Maybe I am the only member of this panel that has listened to the degree that I have. This is why I gave you the full reins this morning to do a great job in promoting the Customs

Service, the wonderful job you are doing, and the fact that all of these allegations are baseless. I listened very carefully, and I have heard hardly anything. Yet, I am hearing at the end that somehow or other, you were concerned enough, even before we wrote you the letters, to set up a Blue Ribbon Panel.

49. It is inconsistent, in my view, to get all these glowing reports about nothing being wrong, that all we have had are irresponsible whistleblowers making these accusations, and the rest of it is rumor, and the press is all wet from the standpoint of what they have been reporting. I just do not think the Customs agency has accepted responsibility.

50. Ms. HALLETT. Mr. Chairman, first of all, at the time, I did not realize that we had such serious problems in mismanagement in southwest Texas. I knew we had management problems, and that is why I made changes.

51. Mr. BARNARD. I did not get that impression from the testimony today, Ms. Hallett.

52. Ms. HALLETT. Mr. Chairman, those are what the findings are. I told you that I was not glossing over. We had serious problems; those were my exact words.

53. Mr. BARNARD. We have discussed this privately and otherwise. You did not want any case studies brought before the committee, mainly because of the stated fact that Customs did not have a systemic problem. Somewhere along the line, the problem was systemic enough for you to take a very broad--and I compliment you for that--a broad step forward to set up a Blue Ribbon Panel. . . .

[End of Excerpts]

[See TAOP at App. 219, ¶ 373

[Paragraph numbers added to text]

EXCERPTS FROM NEWSPAPER ARTICLE A SPECIAL REPRINT OF THE ALBUQUERQUE JOURNAL EDITION OF WEDNESDAY, OCT. 24,1995

*17

WHISTLE-BLOWER SAYS TRUTH HAS PRICE RETALIATION ALLEGED AFTER CUSTOMS BUST

By MIKE GALLAGHER of the Journal

1. Former Customs group supervisor Ward Olson has a word of advice for would-be whistle-blowers: "Don't." "Being a whistle-blower ended my career," said Olson, who took early retirement in 1993. "You get that feeling in the back of your neck that they are laying for you because there is no authority in the federal government that is going to keep them in check. You become a sitting target."

2. Olson was in charge of air-smuggling investigations in the Albuquerque Customs office from the late 1980s until his retirement.

3. Olson claims that, in 1991, three cases his unit was working on were quashed by Michael Lappe, then-special agent in charge of the El Paso office.

4. "These were the three best leads we had at the time," Olson said in a recent interview.

5. Lappe, in a telephone interview, flatly denies any retaliation against Olson and denied quashing any investigations.

6. Olson had crossed Lappe in 1990 when Olson was supervisor of Operation Transwestern, an undercover air-smuggling

sting investigation in which agents provided smuggling services to foreign drug suppliers.

7. Lappe held a news conference in June 1990, after the seizure of a large shipment of cocaine at an air strip near Mountainair.

8. Albuquerque reporters were misled about the nature of the undercover operation during the news conference -- which Olson says was held over his objections and those of his supervisor and the FBI.

9. Lappe told reporters that Colombians were bringing cocaine into "the heartland of America," when the delivery had been arranged by undercover Customs agents.

10. In fact, Customs had been involved at every point in transporting the cocaine from international waters outside of Colombia to Mountainair. The Colombian drug suppliers later were convicted of federal drug charges after a jury rejected defense arguments of entrapment by undercover agents.

11. The Albuquerque media challenged Lappe's statements and raised questions about Customs' role in the case.

12. Lappe, Olson and Jerry Padallino, then-assistant regional commissioner for enforcement, were summoned to Washington, where they explained the news conference incident to members of the state's congressional delegation.

13. The three men met with Sen. Pete Domenici, R-N.M., and Olson said Lappe lied to Domenici when the senator asked if Customs agents were on the plane transporting the cocaine.

14. Lappe said he can't recall details of the meeting, but he said during a recent interview that he might have been confused in some replies to Domenici's questions.

15. The FBI, which participated in the case and news conference, reviewed statements made at the news conference.

16. Then-FBI director William Sessions admitted in a letter to Domenici, " ... I must acknowledge that there were several misrepresentations made to the news media. Law enforcement is based on trust between citizens served and Government. A breach of that trust, as evidenced in this incident, erodes the effectiveness of all law enforcement."

17. After the controversy died down, Olson said he found an expected promotion stalled and investigations into drug smuggling and money laundering quashed by Lappe.

18. Lappe later denied the allegations to federal investigators.

19. Lappe, now stationed in Europe, agreed to a recent telephone Interview. "Ward's perceptions were a little bit distorted," Lappe said. "Ward was treated well. I thought we were friends, and he began making all these allegations that were totally false.

20. "He caused me a lot of heartburn for 15 months."

21. But Olson insists that his formal complaints about Lappe's conduct led to cases being quashed and ultimately to his retirement. . .

.

'NO ONE STOLE THE MONEY'

22. One of Olson's allegations appeared to be substantiated by the OIG investigation.

23. He claimed that $10,000 seized in Operation Transwestern was transferred to a separate money-laundering investigation El Paso in violation of a legal opinion by Customs attorneys.

24. Lappe said in his affidavit that he was only vaguely aware of the two undercover operations and referred OIG to someone else, whose name was redacted.

25. According to the report, this person confirmed the money was transferred but said it didn't violate internal directives.

26. A legal memorandum from the chief counsel for Customs contradicts that conclusion.

27. The report shows that Lappe circulated a 1991 opinion "to supervisors in the El.Paso district"

28. According to the opinion, released under the Freedom of Information Act, money seized in one undercover operation may be used to keep that operation going but shouldn't be transferred to another.

29. Once the operation is completed, any money is .supposed to be turned over to the Department of the Treasury.

30. According to the legal opinion, "the proceeds from an undercover operation may be used to offset necessary and reasonable expenses incurred in such operation ...

31. "However because proceeds are not subject to a specific appropriation, Customs should be particularly prudent in expending them. For this reason, we believe that Customs must expend proceeds only for articles or other purposes directly attributable to a particular operation. Moreover proceeds may not be expended for carrying out Customs general enforcement work."

32. Lappe's cover memo to supervisors calls the document "an excellent memorandum . .. outlining what can and cannot be done with undercover funds."

33. Lappe said that if the funds were transferred, they were not misused.

34. "No one stole the money, it was used for a legitimate law enforcement investigation," Lappe said. "This was common procedure until they told us to stop it, which we did."

35. Olson said in a recent interview the $10,000 transfer occurred after the counsel's memo was circulated. Customs has not responded to the Journal's request in early 1994 under the Freedom of Information Act for records of the transfer.

36. Olson also said he was ordered by supervisors in El Paso to deny OIG auditors access to accounts for Operation Transwestern.

37. Lappe said, "That's simply not true. The office was audited constantly and no one ever found any problems."

38. OIG would not release information concerning its auditors being denied access to undercover accounts.

39. Customs has not responded to the Journal's request for information on that allegation.

40. Customs did release a file, with Olson's consent, on an internal affairs investigation of Olson, which found that an allegation that he leaked information to a criminal informant was unfounded. . . .

[End of Excerpts]

[See TAOP at App. 155, ¶ 130; App. 222, ¶ 386-88]

EXCERPTS FROM MICHAEL LAPPE''S MEMORANDUM 4-16-92 REGARDING OPERATION TRANSWESTERN

UNITED STATES GOVERNMENT
DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

Date: April 16, 1992
File: ENF-1 E:EO:EP:AL DJD

TO: Director, Office Domestic Operations
Attention: Headquarters Review Panel
FROM: Special Agent in Charge, El Paso, Texas

Subject: Desk Audit For Group Supervisor Ward R. Olson

By memorandum your office requested additional information in order to make a competent evaluation of a previous request by my office to upgrade the GM-13 Aviation Investigations Group Supervisor, RAC/Albuquerque to a SM-14 due to accretion of duties. The position that will require a desk audit has been held by Ward R. Olson since March 29, 1987.

Attached to this memorandum was a form applicable. to a request for a desk audit from a GS-12 to GS-13. Since this form does not specifically apply to the task at hand, I will provide the requested information in a format that addresses the issues and mirrors the suggested format as closely as possible.

As the-Special Agent in Charge of the El Paso office, I endorse the attached request for a desk audit for Ward R. Olson, Group Supervisor, RAC/Albuquerque. I certify the following information is

correct and accurate:

1. I have reviewed the cases cited in this memorandum and they accurately reflect the investigations conducted by the personnel supervised by G/S Ward R. Olson.

2. The case numbers of the cited investigations are . . . AL13CROAL030, . . . and . . ..

AL13CR0AL030 OPERATION TRANSWESTERN

[Subparagraphing added to text]

a. Headquarters certified undercover operation which resulted in the arrest and conviction of five persons and the seizure of 1252 pounds of cocaine. . . .

b. AL13CROAL030- Four defendants were arrested in Newark, New Jersey as a result of a controlled delivery of 569 kilos of cocaine. One defendant was located and arrested in Philadelphia, Pennsylvania. All five defendants were subsequently indicted and convicted in the District of New Mexico. Agents under the supervision of G/S Olson conducted the undercover investigations that resulted in these arrests.

SEIZURES, 1NDICTMENTS, AND PENALTIES

c. AL13CROAL030

1. 569 kilos of cocaine

2. $204 in U.S. currency

Note: $460,084 in U.S. currency was received as proceeds in this investigation. . . .

9. The cited cases were initiated by agents under the supervision of G/S Ward Olson. G/S Olson was the first line supervisor

for each of these cases and as such, was responsible for all aspects of case management.

10. Number of collateral leads sent by agents operating under the supervision of G/S Olson in cited cases and offices foreign and domestic, to which leads were sent.

d. As the first line supervisor, Ward Olson reviewed all of the investigative work conducted in the, cited cases. G/S Olson approved all ROIs [Reports of Investigations] in which collateral investigation was requested to ensure that all requests were necessary to further the initial investigations. Collateral activity an the cited cases is summarized below. . . .

e. AL13CROAL030-A substantial amount of investigative activity on this case took place outside of the Albuquerque area. G/S Olson supervised the activities of the case agent on trips to Miami, Florida to meet with one of the violators and on several collateral requests written on this case. This investigation had to be coordinated with the SAC/Miami and with Headquarters due to the fact that foreign travel was involved. This case resulted in an undercover trip to Colombia to obtain cocaine for a controlled delivery into the United States and G/S Olson was the first line supervisor for all of these activities. After the arrival of the cocaine into New Mexico the violators advised that the ultimate delivery point was New York City. G/S Olson coordinated the activities of this office along with agents of the SAC/Miami and SAC/Newark in order to facilitate the controlled delivery in Newark, New Jersey. G/S Olson traveled to Newark on two occasions to supervise the controlled delivery and to coordinate activities between the various offices involved. After the arrests had occurred in Newark, there were several collateral requests to various offices in preparation for trial. These included: Miami, Florida; Houston, Texas; Philadelphia, Pennsylvania; Tucson, Arizona and Newark, New Jersey. Additional defendant briefings produced testimony of corruption within the offices of a U.S. Embassy in a South American country and within a foreign government. This information was documented and forwarded to the proper investigative jurisdictions.

. . .

f. AL13CROAL030- Consensual monitoring was utilized in this investigation and recordings were made of telephone conversations between the violators and the undercover agents. At the time of the controlled delivery in Newark, Customs installed audio and video recording devices in the motel room to record the meetings between the undercover agent and the primary violator in this case. The resulting video was of such excellent quality that it had significant impact on the decision of all violators to plead guilty in this case.

13. Number of personnel Group Supervisor Olson supervises:

g. Daily Supervision- Ward Olson is the supervisor of a co-located air smuggling investigations group in Albuquerque, NM. This group is currently staffed with two GS-13 Special Agents, one GS-12 Special Agent, one GS-9 Customs Patrol Officer, and one GS-13 TDY Special Agent. In addition, GS Olson is responsible for supervising the investigative activities of approximately fifty Customs Pilots and Air Interdiction Officers assigned to the Albuquerque Air Branch. A number of the pilots and air branch supervisors that operate under the investigative supervision of G/S Olson are GS-13s and GM-14s. These officers are not authorized to open an investigative case write an ROI, or document a source of information without the approval of GS Olson. G/S Olson has also been requested to assist in training a GM-14 Group Supervisor that has recently been appointed to supervise another air smuggling investigations group in the El Paso SAC District. . . .

h. AL13CROAL030: In addition to the case agent, G/S Olson supervised the various agents/AIOs/pilots ho participated in the undercover operation. At the time of the controlled delivery, there were participants from the RAC/Albuquerques SAC/Miami, SAC/Newark as well as state and local law enforcement agencies. This operation required G/S Olson to participate in the supervision/coordination of the controlled delivery operation in Newark, New Jersey. There was a total participation of over 40 law enforcement officers in this investigation.

. . .

/s/ Michael T. Lappe
Special Agent in Charge

[End of Excerpts]

[See TAOP at App. 219, ¶ 375]

LETTER TO CAROL HALLETT
U.S.C.S. COMMISSIONER: OCTOBER 15, 1991

Ward R. Olson
4520 Sherwood, NE
Albuquerque, NM 87109
505-881-4431

Carol Hallett
U.S. Customs Commissioner
1301 Constitution Ave. NW
Washington, D.C.

Dear Commissioner,

Attached for your review and forwarded as a courtesy is a copy of a letter I am sending this same date to U.S. Senator Domenici.

In that letter I have outlined adverse events & issues that exist in the El Paso District. I have taken this step as I have exhausted any established procedures for addressing those issues within the existing framework.

I ask that you consider carefully the information contained. The entire Southwest Region is awaiting some positive action from you commensurate with your rhetoric in the E-Mail system. I wish to say that unfulfilled promises of reform have more of a deleterious effect on moral than the uncompleted work of the blue-ribbon panel.

I prey [sic] that you don't believe that your work is done with the examination only a portion of the Southwest Region.

Sincerely,

/s/ Ward R. Olson

Supreme Court, U.S.
FILED

981345 FEB 8 - 1999

OFFICE OF THE CLERK

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

MARK B. RASMUSSON, et. al.,

Petitioners,

v.

LAWRENCE E. FROST, et. al.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

APPENDIX G
Expert Witnesses Affidavits

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APPENDIX G

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[Paragraph numbers added to text]

AFFIDAVIT OF EDWARD H. WAGNER

APRIL 3, 1997

1. I, Edward H. Wagner, state that this affidavit is in addition to my affidavit dated March 18,1997, which includes attachments one (one) through six (6). That affidavit and attachments are made a part of this affidavit. My qualifications are set out in my affidavit dated March 18, 1997.

2. I know through my training and experience that prior to initiating a multi violation investigation the normal procedure is to conduct inquiries of all available law enforcement and regulatory data bases, contact other law enforcement agencies and officers and review their files, interview available informants, and review the results of any prior investigations. The results of prior investigations would include a review of any related trial transcripts, and a review of the trial testimony of key witnesses. I know that as both an agent and supervisor I would want to even more closely scrutinize the results of previous investigations where the subject(s) had been acquitted. In addition, as part of a grand jury investigation, agents participating in a task force investigation would have access to IRS tax information including tax return information, and the results of prior audits and investigations. I know through my experience it is customary that when the El Paso Police Department, or the El Paso County Sheriff's Office participate in a task force investigation with federal agencies, one of the federal agencies will normally be the lead agency. However, there is nothing that precludes a state and local agency from being the lead agency.

3. The USCS, as the lead agency, and USCS agent Frost and the other agents of the Financial Task Force (FTF) should have assured that one of the agents or officers, as part of their development of background information, made the previously cited contacts and

reviewed the referenced information to objectively and reasonably evaluate their case potential relating to RASMARK, the Rasmussons and Andrew Gantkessy before launching a full a scale investigation again them.

4. Having sat in on agent Frost's deposition and reviewed his declaration [(attachment 7); see App. 955-65] I found no indication that agent Frost or the FTF obtained internal USCS regulatory or compliance reports relating to RASMARK. Agent Frost had access to the results of prior USCS reports involving the inspection of RASMARK aircraft and yet failed to obtain these reports or ignored the results of the prior inspections of RASMARK aircraft. During his deposition [(attachment 8, page 76); see App. 421] agent Frost intimated the FTF had seized one aircraft belonging to RASMARK, a Lear Jet with tail number N7GP, which belonged to a Guillermo Portillo. A simple but complete check with the Federal Aviation Administration (FAA) would have identified the true owner of the aircraft and the fact that RASMARK had filed a mechanics lien on the aircraft related to non payment of services performed by RASMARK as documented in Mark Rasmusson's affidavit. FAA records would also show any FAA violations made by RASMARK aircraft. There is no indication that any of this information was obtained. If agent Frost and the agents associated with the FTF had contacted DEA agents Tom Lenox and Steve Perkins, the case agents on the Jesus Flores OCDETF investigation, in which Mark Rasmusson was indicted, they would have been told Mark Rasmusson was never a major player in that investigation as stated in both the Lenox and Perkins declarations [(attachments 9A and 10); see Apps. 966 and 1053]. As part of his investigation, agent Frost had access to probate records documenting the inheritance of Mark B. Rasmusson. Agent Frost during his deposition [(attachment 8, page 24); see App. 380] stated he attempted to document Mark B. Rasmusson's inheritance, but the probate was very confusing and disarrayed. However, assigned to the FTF was IRS Special Agent Fonda Hivick, who is also a Certified Public Accountant (CPA) as reflected in her deposition [(attachment 11, page 12); see App. 529]. Agent Frost never solicited the help of agent Hivick to fully understand the magnitude of Mark B. Rasmusson's inheritance, a

major source of funds, for Mr. Rasmusson during the years he was investigated.

5. During his deposition, [(attachment 9B, pages 14 & 15); see Apps. 463-466] agent Lenox testified that during the Flores DEA OCDETF investigation he did not do any type of background check on Mark B. Rasmusson before initiating his case against him.

6. During both the DEA OCDETF investigation of Jesus Flores (and Mark Rasmusson) and the subsequent USCS investigation, and FTF OCDETF investigations of RASMARK, Mark Rasmusson, Deborah Rasmusson and Andrew Gantkessy, agents Lenox and Perkins of the DEA, and agent Lawrence Frost of the USCS, other agents and other partners of the FTF failed to obtain important background information and documents which would have showed that RASMARK was a legitimate company, carrying out a legitimate business activity, from which Mr. and Mrs. Rasmusson received completely legal proceeds. The actions of the USCS, as the lead agency, the USCS management, agent Frost and the other agents involved with the FTF, and their failure to obtain this information, precluded a fair and objective investigation of RASMARK, Mark B. Rasmusson, Deborah Rasmusson, and Andrew Gantkessy.

7. Through my training and experience I am also familiar with the term lookouts. I am familiar with both Treasury Enforcement Communications System (TECS) lookouts, and Federal Aviation Administration (FAA) lookouts. I know that an agent can place a TECS lookout on persons, vehicles, or aircraft entering or leaving the United States. A lookout includes such information as the name of the agent placing the lookout, a telephone number where they can be contacted, the duration of the lookout, and the type of action requested by the agent. An agent can request specific action pursuant to the lookout such as: notify the agent when a person, vehicle, or aircraft enters or exits the United States; search the person, vehicle, or aircraft; identify all the subjects in a vehicle or aircraft, and take no further actions, or if subjects are known to be dangerous, approach with caution. An FAA lookout can be placed on

aircraft regarding domestic flights and can include similar instructions; however, there is not the same search provisions as those at an international border. An agent has very limited or no authority to search an aircraft on a domestic flight in the absence of a search warrant.

8. I have reviewed the affidavits of RASMARK pilots Jerry Burnett and the handwritten statement of David Jackson [(attachments 12 and 13); App. 350]. Burnett testified concerning searches of RASMARK aircraft on October 18, 1988 in Brownsville, Texas and July, 1990 in El Paso, Texas. In both incidents, the aircraft were involved in domestic flights where the agents or officers had no implied legal search provision, in the absence of a search warrant. The actions and numbers of agents in each incident indicates a lookout was in place. The search of the RASMARK aircraft on October 18, 1988 was not voluntary based on the number of agents present with their guns drawn and pointed at the crew members. The circumstances of the stop of the RASMARK aircraft on July of 1990 also indicates there was a lookout in place. Burnett
stated he was stopped by USCS vehicles and ordered to clear customs. The agents alleged that Burnett had crossed into Mexican space, which Burnett denied.

9. RASMARK pilot David Jackson testified to being stopped on June 16, 1993 in Dallas, Texas and again on September 1, 1993 in Dallas, Texas. According to Jackson the search on June 16, 1993 involved agents of the USCS and officers of the Dallas Police Department. The agents again approached the RASMARK aircraft with their guns drawn. When asked if he (Jackson) would sign a consent to search, Mr. Jackson asked "What if I refuse?" Mr. Jackson was told by a female agent they would keep them overnight until a search warrant could be obtained. Because the cargo was time sensitive Mr. Jackson signed the consent to search. One of the agents indicated to Jackson that RASMARK was on a "hit list." After the aircraft was searched, the plane and its' crew were released.

10. On September 1, 1993 a RASMARK aircraft and pilot David Jackson were again stopped in Dallas, Texas this time by two

DEA agents who wanted to search the aircraft. When Mr. Jackson asked to see their search warrant, one of the agents replied he didn't need a warrant. When told by Mr. Jackson that only FAA inspectors could search the plane without a warrant, the DEA agent called for an FAA inspector to meet him. The FAA inspector then inspected the plane and checked the pilot and copilot's papers.

11. The facts and circumstances of each of the searches indicate there were lookouts in place on RASMARK aircraft. I know through my training and experience that lookouts are normally left in place for thirty days and then removed. Because there was no contraband seized in any of the referenced stops and searches, the normal procedure would have called for removal of the lookouts. However, the statements of Mr. Burnett, and Mr. Jackson, and Mark Rasmusson indicate lookouts on RASMARK aircraft were placed over a period of years without any results, that is, no contraband was seized. The conduct of the agents, the ongoing placement of the lookouts without results did not serve any reasonable or objective law enforcement purpose nor was the behavior by the agents reasonable.

12. I have reviewed the declaration of George Salas [(attachment 14); see App. 973]. In his declaration /affidavit [(page 20); see App. 973] George Salas denied working as a plant or in an undercover capacity for agent Lawrence Frost. Salas in his deposition [(attachment 15); see App. 479] stated he obtained approval from the El Paso Police Department for his outside employment. Salas' sworn deposition is not credible in that the El Paso Police Department would have never approved his request to do private security work for Deborah Rasmusson, knowing that RASMARK and the Rasmussons were the subjects of a Federal, and State and Local Task Force investigation for money laundering and other alleged violations. That EPPD knew the Rasmussons were under investigation is supported by the fact that EPPD is an FTF partner and the fact that Sergeant McBain, a narcotics officer in various state and federal task forces quizzed Salas about the Rasmussons and the FTF investigation casts serious doubt as to Officer Salas veracity in his sworn affidavit. Once officer Salas agreed to provide information to agent Lawrence Frost he became an undercover

agent for the Financial Task Force. Also, as part of his "outside employment" officer Salas at the end of February, 1992 provided the names, addresses, and dates of birth of Mark Rasmusson and Deborah Rasmusson to a friend of his who is an FBI agent and asked him (his friend) "to check into them to make sure that there would be no problems with me continuing to work for Deborah Rasmusson." It is reasonable to infer that once Salas was made aware that the Rasmussons were the targets of a federal investigation that Salas informed his supervisor who advised Salas that EPPD knew about the investigation and was part of the investigation as a FTF partner and Officer Salas was required to remain in the confidence of Mrs. Rasmusson and continue to report to FTF agent Frost. Salas next stated in his declaration that "on March 2, 1992 I received a phone call from Mr. Lawrence Frost and he identified himself with the United States Customs Service and advised me that he was conducting an investigation into Mark and Deborah Rasmusson and Rasmark Jet Charter and that if I observed anything unusual or illegal that the Rasmusson's were doing that I contact him immediately." Agent Frost states in his deposition that it was Salas who contacted Frost regarding the Rasmussons. Salas, in his declaration, goes on to say he worked another two and half months for Deborah Rasmusson, yet he was concerned in late February and contacted an FBI friend to make sure there were no problems in working for Deborah Rasmusson. After learning that RASMARK and the Rasmussons were under investigation he continued his employment. In his deposition [(attachment 15, page 36); see App. 484] officer Salas states he was paid by the Rasmusson's six to eight times, and yet was providing information to the FTF and agent Frost. Agent Frost in his Affidavit for Search Warrant, dated May 26, 1992 [(attachment 24, paras 4-6); see App. 908] states officer Salas contacted him in March, April, and May, and again on May 23, 1992. The facts indicate that officer Salas was in effect an undercover agent for the FTF and agent Frost.

13. Officer Salas, in both his declaration and his deposition,acknowledged going to the Rasmusson residence at night and spending several hours with Deborah Rasmusson and Salas admitted taking Deborah Rasmusson to his personal residence, and to an El Paso

Police Department function at O'Henry's, a local bar and restaurant. Deborah Rasmusson in her sworn statement stated that officer Salas appeared very concerned for her safety and subsequently convinced her to hire him as a body guard. Deborah Rasmusson also stated that she and Salas had an affair that lasted until May 23, 1992. Deborah Rasmusson also stated she had sex with officer Salas approximately six times including in her residence and in Salas' residence. When asked about his affair with Deborah Rasmusson during his deposition, Salas' attorney strongly objected to the question which remains unanswered. During that time, Salas gained access to their residence, office, and had the related keys. Salas also implied to her that her husband was involved in criminal activities and was plotting to kill her. Salas on several occasions appeared at her residence and the RASMARK offices in uniform driving his patrol car.

14. If Salas was not acting in an undercover capacity he engaged in gross misconduct involving the use of his time, his patrol car, and engaging in a two and one half month affair with Deborah Rasmusson, the alleged subject of a FTF investigation. If officer Salas was acting in an undercover capacity he was not truthful in his declaration or deposition. Salas' affair with Deborah Rasmusson the target of a FTF investigation, in and by itself constitutes misconduct on his part as an officer of the El Paso PD.

15. Attachment 6 (see App. 1093) is a USCS Report of Investigation dated June 14, 1993 prepared by USCS agent Fred Schroeder relating to interviews of Andrew Gantkessy on June 2 and June 3, 1993. The report reflects at least five law enforcement agents were present to conduct the interview. Through my training and experience I know that it is improper to conduct an interview with five agents or officers present. That interview environment would be both intimidating and coercive. Also, any statement given by a witness could not be considered voluntary. I have never interviewed a witness with four other agents and officers present. In addition, Iam not aware of any interview with a witness being conducted by five or more agents, including when I participated on the DEA OCDETF Task Force. The use of five or more agents by agent Frost during the interview did not

serve any reasonable or objective law enforcement purpose. The summary of the June 2, 1993 contact with Andrew Gantkessy consists of five lines. However, FBI agent Joe Acosta testified in his sworn deposition that the June 2 interview with Andrew Gantkessy lasted thirty to forty-five minutes [(attachment 16, pages 57 & 58); see App. 691]. It is not credible that a thirty to forty-five minute interview could be accurately summarized in five lines. Per agent Acosta's deposition they asked Andrew Gantkessy to assist them, and either he or USCS agent Fred Schroeder called Andrew Gantkessy to ask him to come to the June 3 interview. The June 2 interview makes no mention that Andrew Gantkessy was asked to "assist". In his sworn declaration [(attachment 17, pages 2 & 3); see App. 1033, para 11] agent Acosta stated the Task Force agents had previously called to make an appointment. Agent Acosta stated there were 6 to 7 members of the Task Force present to conduct the interview. Acosta also stated "there were more officers present than would usually be necessary to conduct an interview because the members represented various agencies with different, individual interests in potential money laundering violations." Agent Acosta's statement is not believable. I have participated in many multi agency investigations including DEA, OCDETF Task Force investigations, and the normal procedure was to conduct interviews with two agents. I have never participated in an interview of a witness using five or more agents nor am I aware of anyone else who conducts a witness interview with five or more agents. Agent Acosta's deposition and declaration contradicts USCS agent Fred Schroeder's declaration [(attachment 18, page 3); see App. 995, para 10] which states Andrew Gantkessy voluntarily came to his (Schroeder's) office. In addition, during his sworn deposition agent Schroeder denied that they asked Andrew Gantkessy to cooperate [(attachment 19, pages 77 & 78); see App. 594]. Officer James Holland testified during his deposition that members of the FTF had been conducting surveillance of Andrew Gantkessy and his place of employment prior to the June 2, 1993 interview [(attachment 20, page 37); see App. 622], another fact omitted by agent Schroeder in his report.

16. The USCS report relating to Andrew Gantkessy's interview on June 3, 1993 [(attachment 6); see App. 1093] failed to make any mention that USCS agent Schroeder and FBI agent Acosta

asked Andrew Gantkessy to make a monitored telephone call to Mark and Deborah Rasmusson and to wear a wire. In addition, the report fails to document numerous threats made by Schroeder and Acosta, as reflected in Andrew Gantkessy's affidavits.

17. I know through my training and experience that the primary motive in interviewing Andrew Gantkessy with five or more agents was to intimidate him and coerce him into cooperating with the FTF and participating agents and agencies. The USCS report of Andrew Gantkessy's interview and the related actions by members of the FTF were not reasonable and objective, but designed to place fear and intimidation in Andrew Gantkessy for the purpose of making him cooperate in the investigation of RASMARK, Mark Rasmusson, and Deborah Rasmusson.

18. Attachment 21(see App. 1065) is USCS Report of Investigation, dated September 17, 1992, prepared by USCS special agent Eric Mills. The report discusses a surveillance at the RASMARK offices on September 16, 1992. The report is insufficient for evidence purposes. The report does not show which agent observed which activity. The normal procedure is to maintain an evidence log as to which agent observed the activity referenced or to have each agent prepare a memorandum of surveillance documenting the activity they personally observed. USCS agent Eric Mills in his deposition [(attachment 22, page 94); see App. 650] stated no separate memorandums of surveillance were prepared. The report goes on to state [(page 3); see App. 1068] at "1215 hrs" a red Mercedes. . . operated by two HMA's arrived at RASMARK and both men went inside. The USCS report fails to disclose that RASMARK was located at 6805 Boeing Drive inside of Julies Aircraft Services, Inc., also known as Julie's Pilot School and Flight Service. I have been to the building and the building was and is occupied by several tenants, all of who share the same parking lot. The building occupants include a parts and supplies section and aircraft repairs section. The building is open to the public and persons entering the building can go to any number of activities without ever going near RASMARK. In fact, RASMARK was located on the second floor, with no outside windows. Once a person enters the front door of the building it is impossible to tell which

activity they went to, including RASMARK. In his deposition, Eric Mills admitted the FTF did not did not follow the suspects into the building to determine where the HMA's went.

19. Agent Mill's report further states that at 1605 hrs. the red Mercedes, WMA driving, Hector BARRERA passenger, . . . departed", however, the report fails to disclose how agent Mills knew the passenger was Hector BARRERA. When questioned during his deposition [(attachment 22, page 100); see App. 660] agent Mills could provide no explanation as to how the FTF knew the passenger was Hector Barrera, i.e., through a drivers license photo etc. Hector Barrera was an alleged drug smuggler and this was clearly a very inept effort by agent Mills and FTF to associate RASMARK and Mark Rasmusson with drug smuggling. The actions of USCS agent Eric Mills and the FTF, including agent Mills' report are not reasonable and objective. The report fails to disclose vital information known to the FTF agents, i.e., the parking lot was shared by all the occupants of the building, that the building belongs to Julie's Aircraft Service, Inc., that you cannot tell where persons entering the building through the front door go once the door closes, and that the FTF never verified that the passenger in the red Mercedes was in fact Hector Barrera (other than the vehicle was associated or registered to Barrera).

20. I have reviewed a USCS report dated May 21, 1993, prepared by USCS agent Fred Schroeder relating to trash retrieval at 11157 Leo Collins on May 3, 1993 [(attachment 23); see App. 1090]. The report states Detective Jerry Keith obtained the residential trash from 11157 Leo Collins, El Paso, Texas. The report does not state how the trash was obtained, by Detective Keith going on the premises of the Rasmusson residence, or from an El Paso Sanitation Department employee. If it was obtained from a Sanitation Department employee, that person should have been identified by name to establish a proper chain of custody. The report also does not indicate that the FTF had received written permission from the Director of the Sanitation Department which is the policy of the El Paso Sanitation Department.

21. The report shows [(page 2); see App. 1090] among the items seized "a plastic bottle with the hollow, plastic part of an ink pin

stuck in middle. The top of the bottle was covered with aluminum foil and small holes were punched in the foil." According to the report agent Schroeder conducted a chemical field test of the residue on the foil and received a positive reaction for cocaine. The report also shows another item seized was "a silver spoon with black residue in the bowl of the spoon." Agent Schroeder again conducted a chemical field test of the residue in the bowl of the spoon and received a positive reaction for cocaine.

22. The report does not indicate that agent Schroeder ever attempted to do any type of fingerprint identification to see in fact who handled the drug related items. Mark Rasmusson's affidavit states that during that period of the investigation the Rasmussons were having remodeling done on their residence and there were several people, including construction workers in and around their residence.

23. Attachment 24 (see App. 908) is USCS special agent Lawrence E. Frost's affidavit for a search warrant dated May 26, 1992, relating to a brown cardboard file box. On page one of agent Frost's affidavit he states he was told by officer George Salas that, Deborah Rasmusson told him (Salas) that her husband, Mark Rasmusson, was attempting to kill her. Frost also states that during April and May of 1992, he received two additional telephone calls from Salas who told him that Deborah Rasmusson continued to fear for her life and that she felt that the reason she was in danger was her husband's criminal activity. Deborah Rasmusson in her sworn affidavit stated Salas implied that Mark (her husband) was plotting to kill her and was involved in illegal acts. Deborah Rasmusson also stated that during her affair with Officer Salas he attempted to convince her that Mark was associated with some really bad people who were involved in drugs and money laundering. Salas insisted she should be afraid of Mark (Rasmusson).

24. There is no indication that agent Frost ever prepared any USCS reports relating to the alleged conversations with George Salas in March, April and May of 1992. In fact, officer Salas' testimony on page 43 of his deposition contradicts agent Frost's testimony [(attachment 15); see App. 908]. Officer Salas states he told Frost "I

told him who I was and how I got to work with them (the Rasmussons) and that I had simply wanted to make sure that I wasn't getting into anything I wasn't aware of." Salas in his sworn deposition makes no mention of telling agent Frost that Deborah Rasmusson alleged her husband Mark Rasmusson was attempting to kill her.

25. Also in the Affidavit for Search Warrant dated May 26, 1992 [(attachment 24, page 4); see App. 909, para 6], agent Frost states "on May 23, 1992 I was contacted by Sergeant Salas. Sergeant Salas stated that Deborah Rasmusson had decided that she wished to meet with federal agents to provide information relating to the criminal activities of Mark Rasmusson and associates." Officer Salas in his deposition stated he contacted agent Larry Frost first because "Larry Frost was a Federal agent and I knew they had a witness protection program. And the police department doesn't have one of those. So I didn't there was anything we could to do to help her." Officer Salas' deposition indicates the primary reason Deborah Rasmusson went to the USCS office was because she was told by Salas she could be placed in the witness protection program. However, there is no mention of that in agent Frost's affidavit for search warrant.

26. In addition, agent Frost in his affidavit knowingly and willfully failed to advise the court that when Deborah Rasmusson made the alleged statements regarding her husband Mark Rasmusson on May 23, 1992 in the USCS office Deborah Rasmusson was high on controlled substances and drank a six pack of beer provided to her by agent Lawrence Frost. Agent Frost told attorney William Cole [(attachment 1, page 2); see App. 1292] that Deborah Rasmusson had come into his office within the previous 30 days high on controlled substances (attorney Cole spoke to agent Frost on June 17, 1992). The only time Deborah Rasmusson was in the USCS office was on May 23, 1992. In his deposition agent Frost admitted that he gave Deborah Rasmusson a six pack of beer [(attachment 8, pages 63 & 67) see App. 401]. Frost also admitted that it was not normal procedure to give a potential witness alcoholic beverages. Deborah Rasmusson in her sworn affidavit stated she drank the entire six pack. Continuing this conduct agent Frost attempted to get Deborah Rasmusson, a woman high on controlled substances, and whom he had provided a six pack of

beer which she drank, to sign a consent to search form (for the offices of RASMARK).

27. In his Affidavit Search Warrant, relating to the box of records, agent Frost states "Ian (Deborah Rasmusson's son), stated to U.S. Customs Special Agents Fred Schroeder and Eric Mills that everything that agents needed to convict Mark Rasmusson was in the box his mother carried." Agent Mills stated in his deposition [(attachment 22, page 60); see App. 644] that he gave credence to what Ian said "Because he was -- Ian was attributing that to what his mother had said." Which is the same mother, who according to agent Frost, was high on controlled substances, and had consumed a six pack of beer (provided by agent Frost). Another important fact that agent Frost and the FTF failed to disclose to the court. Agent Frost deliberately failed to disclose the preceding facts to magistrate Janet Ruesch because I believe agent Frost knew the magistrate would not sign the search warrant.

28. I have reviewed agent Lawrence Frost's affidavit for Search Warrant, dated November 19, 1993, related to the Rasmusson residence at 11157 Leo Collins, El Paso, Texas [(attachment 25); see App. 913, para 6]. In paragraph 6 of his affidavit Frost states "This investigation is predicated on evidence that the company is being utilized as part of a money laundering conspiracy." The fact is there was no evidence other than the uncorroborated statements of informants, and the alleged statements of Deborah Rasmusson. Per agent Frost's own admission, Mrs. Rasmusson was high on drugs, and on top of that he gave her a six pack of beer to drink. Based on my training and experience the uncorroborated statements of informants do not constitute evidence.

29. In paragraph 8 (see App. 914) of his affidavit Frost alleges the DEA (OCDETF) investigation was predicated on "facts which indicated that Mark and Debra Rasmusson had provided transportation of controlled substances . . . " That statement is a lie. DEA Special Agent Tom Lenox, one of the two case agents for the DEA OCDETF investigation, testified under oath in his deposition that the task force did not develop any evidence that Mark B. Rasmusson was engaging in

transporting drugs or any illegal contraband for the Jesus Flores organization [(attachment 9B, page 28); see App. 475].

30. In paragraph 15 (see App. 916) agent Frost implies that two payments in the amount of $8,000.00 each received by RASMARK "on consecutive dates is frequently a form of structuring transactions to avoid the reporting requirements contained in Title 26 United States Code section 6050I." What agent Frost doesn't state is the fact that the violation would have been against the customer making the payments, if there was a violation, and also the cited statue is an IRS violation and IRS never investigated or had any case relating to RASMARK or the Rasmussons. Agent Frost's affidavit [(paragraph. 18); see App. 917] states that RASMARK pilot Jerry Burnett concluded "Flores was in the illegal drug business . . ." and that Burnett "had several conversations with the Rasmussons regarding Flores and 'his people' being in the drug business and that both Mark and Debra Rasmusson told him (Burnett) that they knew that Flores was in the drug business." In his sworn affidavit dated September 20, 1996 Jerry Burnett denied making the referenced statements to DEA as he did during Mark Rasmusson's trial, which agent Frost acknowledges in his affidavit [(paragraph 19); see App. 918]. Yet he includes this information he knew was false anyway. In paragraph 20 (see App. 917, para 18) agent Frost is discussing a DEA Form 6, dated September 7, 1990 [(attachment 26); see App. 1195, para 4], specifically paragraph 16. In his sworn affidavit dated September 20, 1996 [(attachment 12); see App. 338], Mr. Burnett stated paragraph 16 (see App. 1195, para 4) of the DEA report is a total lie other than he did tell agent Perkins RASMARK had done approximately $50,000 in work for Flores. Because agent Frost knew that Mr. Burnett had already denied many of the statements attributed to him (Burnett), agent Frost had an obligation to interview Mr. Burnett and determine the truth not just to use statements that supported his affidavit.

31. In paragraph 21 (see App. 918), agent Frost discusses another DEA Form 6, prepared by DEA Special Agent Perkins. Agent Perkin's report and agent Frost's affidavit are again riddled with incorrect statements. In a sworn affidavit dated September 24, 1996 [(attachment 27); see App. 335], Albert Apodaca denied stating that Mark Rasmusson asked if he should re-construct invoices to match the

amounts of which government agents were aware. Mr. Apodaca also stated he did not tell the agents that Mark Rasmusson wanted to amend his May 1990 financial report to include an $11,000 cash transaction, but in fact told them the money ($11,000) was from several cash transactions. Mr. Apodaca also stated he did not tell the agents he was alarmed by Mark Rasmussons actions, but that he was alarmed because the agents contacted him. Mr. Apodaca further stated he told the agents (Perkins) that he always knew Mark Rasmusson to be very honest, and that he was not aware of Mark Rasmusson being involved in any illegal activity. Agent Perkins neglected to put that in his report, and because agent Frost did not attempt to interview Apodaca regarding the truthfulness of Perkins report, he also failed to include that information in his affidavit.

32. Another statement attributed to Mr. Apodaca by agent Perkins and later agent Frost is that "he was relatively familiar with the major accounts of RASMARK Jet Charter and that he had never heard of Jesus Flores nor Vista Remodeling." Mr. Apodaca in his sworn affidavit stated the agents (DEA) implied Flores/Remodeling was a major account which is not true. Even if Flores/Vista Remodeling had spent $50,000 that would not make them a major account. Ford Motor and Chrysler were major accounts and their business with RASMARK was close to or in excess of a million dollars a year.

33. In paragraph 24 (see App. 920) agent Frost discusses a document which bears the initials "MR." In fact the document was initialed "DR" for Deborah Rasmusson (attachment 28).

34. In paragraphs 25 through 27 & 29 (see App. 920) agent Frost discusses an FBI confidential source who alleged among other things that Mark Rasmusson was involved in money laundering, received $500,000 in controlled substance proceeds, and was buying aircraft parts with the proceeds of trafficking in controlled substances. The $500,000 was alleged received from Jesus Flores during 1989 and 1990. The FBI source also alleged that in the "past" Mark Rasmusson would travel throughout the United States in his aircraft and collect proceeds of trafficking in controlled substances and then deliver the proceeds to the interior of the Republic of Mexico. None of the

confidential informants alleged statements were ever corroborated. In addition, agent Frost failed to disclose to the court that IRS did an audit of RASMARK for the years 1989, and 1990 which resulted in a "no change" as documented in attachment 29 (see App. 1290), which is a photocopy of the IRS examination changes. The IRS audit results disprove the informants allegations. As part of an audit IRS does invoice matching for both income and expenses.

35. Frost's affidavit, paragraphs 30-32 (see App. 921), reference an FBI confidential source referred to as "FBI 1." The FBI confidential source alleged that in December, 1991 he/she saw a suitcase with what appeared to be controlled substances and U.S. currency. FBI-1 also reported that during February, 1992 he/she had seen three or four storage type boxes underneath Debra Rasmusson's bed and in her closet. FBI-1 reported seeing business records from RASMARK Jet Charter and boxes of bank statements from banks in Colorado, Alaska, Cabo San Lucas, Mexico, New York and the Cayman Islands. Agent Frost again uses uncorroborated statements of a confidential source. I know through my training and experience if a "reliable" informant provided timely information that they saw controlled substances and currency in a residence, the normal procedure would be to attempt to get a search warrant. Since there is no indication that the FBI attempted to get a search warrant the informant was not considered reliable, or the information was not provided timely by the informant. If the information was not provided timely that would go to the informants reliability. From late February 1992 until May 23, 1992 officer George Salas had access to, and was in and out of the Rasmusson home. During that time officer Salas stated in his deposition he never saw any contraband or illegal drugs or large sums of money in the home [(attachment 15, page 84); see App. 522]. Agent Frost had access to officer Salas observations, but failed to disclose that information to the magistrate. Officer Salas also stated in his declaration [(attachment 14, page 3); see App. 978, para 5] that on March 2, 1992 when he talked to agent Frost he told Frost he had not observed anything unusual or illegal.

36. Frost's affidavit paragraphs 35 through 44 (see App. 923-925), discuss the officer Salas, Deborah Rasmusson contacts

culminating in the seizure of a box of records. In paragraph 35 agent Frost states he was contacted by officer Salas in March of 1992 and Salas stated he understood that Debra Rasmusson was of interest to the Customs Service and that he (Salas) would provide any information she provided to him. Officer Salas' account is slightly different. Officer Salas in his declaration stated he received a telephone call from Mr. Lawrence Frost and he identified himself with the U.S. Customs Service. Agent Frost asked him to contact him (Frost) immediately if he observed anything unusual or illegal. As previously noted, agent Frost failed to advise the court in his affidavit that officer Salas had not observed anything unusual or illegal.

37. Agent Frost in his affidavit describes his conversations with Deborah Rasmusson and her alleged statements regarding Mark Rasmusson, and statements made by Ian, Deborah Rasmusson's fifteen year old son [(paragraphs 37, 38, 40, & 41); see App. 923]. In paragraph 38, agent Frost states Ian Maye (the fifteen year old son) stated he had been telling his mother to get away from Mark Rasmusson for at least five years because Mark Rasmusson is a criminal (paragraph 38). That means Ian Maye at the age of ten knew Mark Rasmusson was a criminal, which is not a very credible statement. Agent Frost failed to disclose in his affidavit important information to the court relating to the May 23, 1992 incident. He failed to disclose that Deborah Rasmusson came to his office high on controlled substances, which he admitted to attorney William Cole [(attachment 1); see 1292], and that he had given Deborah Rasmusson a six pack of beer [(attachment 8, pages 66 & 67); see App. 406], which Deborah Rasmusson in her sworn affidavit stated she drank in total.Agent Frost further states in his affidavit [(paragraph 40); see App. 924] that "Ian Maye, stated to U.S. Customs Special Agents Fred Schroeder and Eric Mills that everything that the agents needed to convict Mark Rasmusson was in the box his mother carried." When agent Mills was questioned during his deposition [(attachment 22, page 60); see App. 644] as to why he gave so much credence to the statement of a fifteen year old child, agent Mill stated "Because he was -- Ian was attributing that to what his mother had said." His mother of course was high on controlled substances and had also consumed a six pack of beer provided by agent Frost.

38. In paragraph 44 (see App. 924) of his affidavit agent Frost states on May 27, 1992 he opened the box of records, which had been seized from Deborah Rasmusson, which was witnessed by FBI Special Agent Joe Acosta and IRS Special Agent Fonda Hivick. The box according to agent Frost contained a mixture of business records from RASMARK Jet Charter, including numerous tax records. According to Frost the box also contained records relating to the personal finances of Mark and Debra Rasmusson. Agent Frost also states in his affidavit [(paragraph 44); see App. 924] "The contents of the box upon analysis indicted (agent Frost's spelling) that the Rasmussons are engaged in tax evasion." That statement is a lie to the court by agent Frost. Agent Frost during his deposition [(attachment 8, pages 125 & 126); see App. 458 attempted to explain his lie by the following "I'm going to have to explain to you, the way that paragraph reads is poor sen-text on my part, poor writing on my part. The analysis of the box did not stand alone. However, through the course of investigation, the type of tax evasion we found is just under reporting of income. In other words, cash proceeds stuck in a pocket and not reported." Agent Frost is not trained in criminal tax investigations, those statutes fall under the jurisdiction of the Internal Revenue Service. IRS Special Agent and Certified Public Accountant, Fonda Hivick state when questioned during her deposition [(attachment 11, page 28); see App. 538], about what information she saw in the box that led her to believe there might be a potential violation stated "I didn't see any information . . . No I didn't see anything in the box . . . Wait a minute, I think we've got crossed because I wasn't talking about the box, those records. I thought that you were talking about everything that I ever heard or seen or whatever." When asked "Did you see anything from the records in the box that would lead you to believe there was prosecution potential for Mark B. Rasmusson under IRS investigating authority?" agent Hivick stated "no, I didn't" [(pages 28 & 29); see App. 538].

39. Agent Frost also had access to the results of an IRS audit of RASMARK for the years 1989 and 1990, which shows IRS "no change" the returns [(attachment 29); see App. 1290] which means there was no additional tax due. As previously stated this information was not reported to the magistrate. Agent Frost during his deposition

[(attachment 8, page 18); see App. 371] stated he had not received training regarding tax evasion.

40. On page 10, paragraph 45 of his affidavit [(attachment 25); see App. 925] agent Frost states "on September 16, 1992 Special Agent Mills reported via written report he observed a red Mercedes . . . arrive at RASMARK Jet Charter at approximately 12:15 p.m." In fact, agent Mills had no way of knowing who the occupants of the vehicle went to see. Agents Mills and Frost attempt to make it appear that the parking lot belongs to RASMARK, when in fact it is associated with Julies Aircraft Service, Inc., a building which is occupied by a number of business activities such as an aircraft parts and supplies section, aircraft repairs section, and an aircraft engines section. RASMARK is just one of a number of business activities which share the parking lot. Once a person enters the building you cannot tell which activity that person is proceeding to. Agent Mills admitted in his deposition [(attachment 22, page 99); see App. 658] the FTF agents did not go into the building.

41. Agent Frost states in paragraph 47 of his affidavit that "on November 10, 1992 at approximately 9:10 p.m. United States Customs Inspectors at the Ysleta Port of Entry, El Paso, Texas carried out an intensive inspection of a 1989 Mercedes automobile driven into the United States from the Republic of Mexico by Debra Rasmusson. The vehicle was found to contain .1 gram of marijuana. Debra Rasmusson was found to be in possession of a switchblade knife. The vehicle was seized under U.S. Customs zero tolerance guidelines. Debra Rasmusson was arrested by the El Paso Police for possession of an unlawful weapon." Mark Riden, a retired USCS agent and group supervisor stated that when a person entering the United States from Mexico is found to have a switch blade knife, the normal procedure is to take the knife and to destroy it and allow the person to go on their way unless there are aggravated circumstances such as an assault. Mr. Riden also stated he is not aware of any person having their vehicle seized for possession of one-tenth gram of marijuana after 1971, even under the USCS "zero tolerance" policy (attachment 30).

42. Agent Frost states in paragraph 48 (see App. 926) that he

was notified at approximately 9:30 p.m. on November 10, 1992 that Debra Rasmusson was being detained at the Ysleta, Texas Port of Entry, so he and agent Mills responded to the Port of Entry. It is obvious from Frost's own statement that Mrs. Rasmusson's vehicle was stopped because of "lookout" placed by agent Frost and that the "intensive" search was also the result of agent Frost's lookout. The seizure of Mrs. Rasmusson's vehicle for one-tenth gram of marijuana and her arrest for possession of a switch blade knife were beyond the scope of normal USCS procedures conclusively indicates search and seizure was triggered by agent Frost's lookout. Per agent Frost's affidavit, paragraph 49 (see App. 926), he attempted to interview Debra Rasmusson. Deborah Rasmusson in her affidavit stated agent Frost never advised her of her rights even though she was in custody.

43. Agent Frost's affidavit [(attachment 25, paragraphs 52 through 56); see App. 926] references a USCS report and interview by USCS agent Fred Schroeder and El Paso Police Department officer James Holland with Arturo Vargas. Regarding paragraph 52, Mr. Vargas, in a sworn affidavit states "I never told the agents RASMARK was double invoicing and altering the dollar amounts and cargo on invoices. What I did tell the agents was that in some instances, if a customer or RASMARK lost an invoice, a new invoice would be prepared to replace it. Thus, a second invoice is generated for exactly the same amount. The dollar amount and cargo would not be altered.

44. In paragraph 53 (see App. 927), agent Frost states Vargas was told to make out cash receipts, however he (Vargas) never saw the cash that corresponded with the receipt. In his affidavit, Mr. Vargas stated his duties and responsibilities did not include handling cash receipts. What he discussed with the agents was the petty cash fund which he was in charge of, which was used for miscellaneous office expenses. Mr. Vargas stated "That is what the referenced 'cash receipts' related to, not the daily business receipts."

45. Agent Frost, in paragraph 56, (see App. 927) states "Albert Apodaca told Mr. Vargas that Debra Rasmusson admitted not paying taxes on $100,000 of income in 1990 or 1991." Mr. Vargas in his sworn affidavit stated he had no recollection of that statement. Mr.

Vargas said what he did discuss with the agents was a potential discrepancy with the RASMARK accounts receivable which was the result of preparing a replacement or second invoice for a lost or missing invoice. Mr. Vargas stated "If the original receivable was not deleted from the computer it would cause a discrepancy/increase in the accounts receivable. However, this would not affect income because RASMARK was a cash basis corporation." Mr. Vargas was never shown a copy of the USCS report to verify or correct the statements attributed to him. CPA Albert Apodaca stated in a sworn affidavit [(attachment 27); see App. 335], "I never told Arturo Vargas that Deborah Rasmusson admitted not paying taxes on $100,000 of income in 1990 or 1991, as reflected in Larry Frosts affidavit." Mr. Apodaca, the CPA for RASMARK, said the IRS did an audit of RASMARK for the years 1989 and 1990, which resulted in a "no change" or no additional tax due. Attachment 32 is a photocopy of the USCS report of Mr. Vargas' interview, which was prepared by USCS agent Fred Schroeder.

46. In paragraphs 57 through 62 (see App. 928), agent Frost discusses a statement of El Paso Police Department officer Clifford Gongaware regarding activity around RASMARK which occurred on July 13, 1992. The interview of officer Gongaware took place on March 1, 1993. Based on my training and experience if the activity was in fact significant the El Paso Police Department should have taken immediate action, or immediately notified the USCS since the Police Department was aware RASMARK was under investigation. The normal procedure would have been for the USCS to timely document the incident via a written report. Instead, eight or nine months after the event, officer James Holland a member of the USCS FTF, interviewed officer Gongaware.

47. In paragraphs 63 through 64 (see App. 929), agent Frost's affidavit, reviews a statement made by El Paso Police Department officer Andrew De Angelo on March 1, 1993 regarding an incident that happened at RASMARK on July 24, 1992. Officer De Angelo alleges he saw two men with rifles, one facing north towards the main airport, and another guard with a rifle, posted to watch south towards Boeing Street. The El Paso Police Department took no action regarding this incident. It is incredible that the El Paso Police Department would

allow two men with rifles near the main airport and inside the airport security fence yet take no action, regardless of whether or not RASMARK was under investigation. Months after the incident, the USCS and FTF decide to document the incident, which does not lend much credibility that this was a significant incident. I know that non law enforcement persons are not allowed to walk around the airport areas with guns. Anyone walking around inside the airport security fence especially in the 0100-0300 AM time frame would be immediately arrested. Furthermore, officers assigned to maintain airport security would never permit anyone unknown to them to be inside the airport security area carrying guns without apprehending these unknown gun toters. Since persons with guns were observed, DeAngelo should have called for immediate backup and proceeded with backup to arrest the unknown person carrying guns.

48. Agent Frost in paragraphs 67 through 70 (see App. 929) discusses an interview he and agent Mills conducted with Gail Beach, owner of Aero Freight of El Paso, Texas, on March 9, 1993. Agent Frost failed to document in his Affidavit for Search Warrant, that much of the information she gave to agent Frost were rumors she heard from other people, which was Gail Beach's sworn testimony during her deposition [(attachment 33); see App. 902]. In addition, Gail Beach denied in her "Answers to Admissions Propounded By Plaintiffs [(attachment 34); see App. 1048]" the statement to agents Frost and Mills "that the Rasmussons were engaged in a 'kick back' scheme with Joe Sudomir and Andy Gantkessy," as stated in agent Frost affidavit, paragraph 68(see App. 930). Ms. Beach also denied [(attachment 34, admission no. 10); see App. 1048] telling agents Frost and Mills that Steve Thorn is the brother of one of her (Beach's) business partners and that Mr. Thorn had information on Mark Rasmusson and an associate, as stated by agent Frost in paragraph 71(see App. 930) of his affidavit.

49. In paragraphs 73 through 77 of his affidavit [(attachment 25); see App. 930] agent Frost discussed a telephone conversation with Steve Thorn regarding a conversation Mr. Thorn had with a Ron or Don Johnson, who agent Frost speculates is Donald Mitchell Joseph, an employee of RASMARK. Mr. Thorn alleges among other things, that Johnson and Mark Rasmusson were flying controlled substances and

drug money all over the place and that DEA is aware of their activities but can't catch them. In my experience real drug smugglers and money launderers do not go around making those type statements to individuals they don't know. Proper investigative procedure called for agent Frost to have shown Mr. Thorn a photo spread to identify that Johnson is in fact Joseph. Also, there is no corroboration of this alleged gossip of two parties drinking at a social function.

50. Agent Frost discusses an interview between USCS agent Schroeder, Detective Holland and Christopher Hines in paragraph 78 of his affidavit [(attachment 25); see App. 931]. Christopher Hines is alleged to have stated that Deborah Rasmusson gave him a check for $4,000 to cash and Hines was supposed to bring the money back to her. Deborah Rasmusson was alleged to have told Mr. Hines "the money was for a person who had given them a lot of business." Mr. Hines in his "Answers to Admissions" [(attachment 35); see App. 1060] denied stating the money was for a person who had given them a lot of business (admission 6) Hines also stated, according to USCS agents Schroeder and Frost (per his affidavit), "Debra Rasmusson went on to state that she owed Andy (Gantkessy) some money, but could not put his name on the check." Mr. Hines also denied making that statement [(attachment 35, admission 11); see App. 1062]. According to USCS agents Frost (per his affidavit) and Schroeder, Mr. Hines stated "Gantkessy and RASMARK Jet Charter were billing Ford for flights that did not occur." Mr. Hines also denied making that statement [(attachment 35, admission 13); see App. 1062]. The plaintiff, Mr. Gantkessy, in his sworn affidavit also denied the referenced allegations, including receiving the $4,000.

51. Pages 16 through 23(see App. 933, paras. 82-86) of Frost's affidavit reflect numerous references to trash retrieval at 11157 Leo Collins, El Paso, Texas, the Rasmusson residence. Both Mark Rasmusson and Deborah Rasmusson have both denied, in their sworn affidavits, throwing away any records relating to RASMARK as described in agent Frost's Affidavits for Search Warrants. Detective Baker during his deposition stated [(attachment 36, page 35); see App. 866] he did not obtain the name(s) of the Sanitation Department employees who picked up the trash and delivered it to him. Based on

my experience and training the Sanitation Department employee would have to be identified, and would be part of the chain of custody, for the items seized to be admissible as evidence. In addition, there is no indication that the USCS, or agents working with or detailed to the FTF, ever obtained any finger print identification, including on the items with trace amount of drugs.

52. USCS Agent Lawrence Frost in his affidavit [(attachment 25, paragraph 88); see App. 935], states detective Jerry Keith of the El Paso County Sheriffs Office saw a vehicle registered to Gildardo Rosales depart the business during surveillance of RASMARK Jet Charter. Agent Frost states Rosales is the target of an on going joint investigation into controlled substance trafficking. What agent Frost didn't advise the court is that RASMARK was located on the second floor of Julie's Aircraft, Service, Inc., and that there are a number of business activities in the building, all of who share the same parking lot. In addition, agent Frost fails to point out that the driver of the vehicle was not identified as being Gildardo Rosales.

53. In paragraph 91(see App. 935) of his affidavit agent Frost refers to an interview with Joe Seaverns in which Mr. Seaverns states Mark Rasmusson inherited a large sum of money from his grandfather, but the money had been "blown" before Mark Rasmusson arrived in El Paso, Texas. Agent Frost preferred using the uncorroborated word of Mr. Seaverns in lieu of fully understanding the Rasmusson probate records. In his deposition, agent Frost stated the probate was very confusing and disarrayed and he obtained what documents were available, and had to order some records, that he never received. This was agent Frost's explanation having traveled to Sacramento to obtain the probate records.

54. Paragraphs 95 through 100(see App. 936) of agent Frost affidavit discuss interviews of Andrew Gantkessy by members of the FTF on June 2, and June 3, 1993. Agent Frost states the June 2 interview of Mr. Gantkessy was conducted by himself and for other law enforcement officers, and that during this first meeting Mr. Gantkessy admitted receiving money from the Rasmussons and several trips from The Rasmussons. Mr. Gantkessy stated in a sworn affidavit that he

became upset and frightened, because agent Frost questioned him in a very aggressive manner, sometimes shouting and using profanity. Mr. Gantkessy stated when he asked permission to call his wife and attorney he was told if he got out of his chair he would be arrested. Mr. Gantkessy said the agents continued to question him non-stop for several minutes about Mark and Debra Rasmusson. Also, that after a while he became sick and finally told them he would agree to anything they said. Mr. Gantkessy stated once he said that and stopped denying their accusations, he was allowed to leave, but before the agents released him they ordered him to report to the U.S. Customs Office on Viscount Blvd. the following day. Mr. Gantkessy said at the time of the interview he was under a Doctor's care and being treated for a heart condition. Mr. Gantkessy said he had triple by-pass surgery in 1987 and a stroke in May of 1990.

55. Mr. Gantkessy stated the following day June 3, he went to USCS office where he was questioned by USCS agent Fred Schroeder and FBI Agent Joe Acosta. Agents Schroeder and Acosta asked him to wear a wire and to make a monitored telephone call. Mr. Gantkessy said he told agent Schroeder he would think about wearing the wire and give him the answer the next day. Mr. Gantkessy refused to make the phone call. Before he left agent Schroeder told him he would lose his job and go to jail if he refused to cooperate with him and the other agents. Mr. Gantkessy said agent Schroeder assured him that if he cooperated, nothing would happen to him. Mr. Gantkessy stated he discussed wearing the wire with two attorneys, Mr. Tony Silva and Mr. Bernard Panetta, both of who advised him not to do it. He subsequently called agent Schroeder and told him he would not wear the wire.

56. FBI Agent Joe Acosta stated during his deposition, the June 2 interview lasted 30-45 minutes maybe [(attachment 16, page 57); see App. 691]. Yet the USCS report relating to the interview consists of only five lines [(attachment 6); see App. 1093]. It is not credible that a 30-45 minute interview could be fully documented in five lines in a report. Agent Acosta said the June 3 interview lasted 15-20 minutes, but agent Schroeder needed almost two full pages to document that interview. Agent Acosta stated they (the FTF agents) did ask Mr. Gantkessy to assist them [(attachment 16, page 52); see App. 684].

Agent Schroeder in his deposition [(attachment 19); see App. 565] when asked if he (Schroeder) asked Mr. Gantkessy to cooperate; agent Schroeder reviewed his report and stated "I don't find that in my report . . ." In his affidavit Mr. Gantkessy said the figures referenced in the report and Frost's affidavit [(paragraph 99); see App. 937] were not true and that he never received any monies or kick backs from the Rasmussons or RASMARK. Mr. Gantkessy said he had been offered a job as a dispatcher with "Next Flight" not a percentage of the company.

57. Beverly Enriquez an employee of Ford Favesa stated in a sworn affidavit [(attachment 37); see App. 347], she was a traffic/distribution specialist, and was responsible for the set-up, shipment, and delivery of parts to Ford assembly plants. Mrs. Enriquez said she was also intermittently responsible for the handling of the carriers accounts as was Manuela Barron. Mrs. Enriquez stated Andy Gantkessy was their immediate supervisor, and he was responsible for contracting with the carriers, such as Aero Freight and RASMARK. Mrs. Enriquez also said Joe Sudomir was Andy's (Gantkessy) supervisor and he had the final say as to which carrier was used.

58. Mrs. Enriquez said she is not aware of RASMARK ever double invoicing, providing false invoices, or over billing. Mrs. Enriquez stated Ford's control over the payables and invoices would have precluded manipulation of the invoices by the carriers. Mrs. Enriquez said RASMARK's rates were always competitive with the other charter services including Aero Freight (Gail Beach). Mrs. Enriquez said the average charter with a carrier such as RASMARK cost approximately $2,000 to $3,000, and the idea that Andy Gantkessy was receiving kickbacks of $5,000 per charter from RASMARK is ridiculous. Mrs. Enriquez said her job required that she frequently work at night, including at RASMARK, and she never saw anyone with guns around the RASMARK planes or in the immediate vicinity.

59. In paragraph 115(see App. 943) of his affidavit, agent Frost discusses the Rasmussons use of the RASMARK jets for personal pleasure and the concept that it is prohibitively expensive compared to the cost of even first class travel. In my experience the personal use of

business assets is a civil tax issue, and would not even be considered as a potential criminal tax violation.

60. In paragraph 116 (see App. 943), agent Frost alleges three confidential sources told him Mark Rasmussons inheritance was depleted before he arrived in El Paso, and that his current lifestyle is supported by "unknown sources of income." This statement by agent Frost is another uncorroborated statement which is typical of those in his affidavit. The normal and responsible investigative procedure would have been to accurately document his inheritance, and to do a source and application of funds to determine if his inheritance and income justified his "current lifestyle." Agent Frost had IRS special agents available to the FTF who could have made this computation. As a matter of fact, RASMARK had net income in excess of $800,000 in 1991, before the USCS, agent Frost, and agents participating in the FTF invoked their vendetta to destroy his contractual relationship with Ford Motor. Agent Frost never made the information available to the court in his Affidavit for Search Warrant that RASMARK's net income was over $800,000 in 1991.

61. In paragraph 120 (see App. 944), agent Frost recaps information derived from DEA's interview with CPA Albert Apodaca. Albert Apodaca in a sworn affidavit told the DEA agents that he always knew Mark Rasmusson to be very honest, and that he was not aware of Mark Rasmusson being involved in any illegal activity [(attachment 27); see App. 335]. Neither DEA or the USCS had any use for that information, or the fact that an IRS audit of RASMARK in 1992, for the tax years 1989 and 1992, resulted in a "no change."

62. In paragraph 123 (see App. 945), agent Frost states "Based on the statements of Mr. Vargas and Mr. Gantkessy I believe there is probable cause to believe that RASMARK Jet Charter has 'double invoiced' flights for Ford Motor Company and bribed Mr. Gantkessy to cooperate in this scheme." In fact the USCS, agent Frost, agent Schroeder and other participants in the FTF totally misrepresented the statements of Mr. Vargas and Mr. Gantkessy.

63. In paragraph 124 (see App. 945), agent Frost states he

believes that based on the statement of Deborah Rasmusson and the association of the Rasmussons with known controlled substance traffickers such as Jesus Flores and Hector Barrera there is probable cause to believe that the Rasmussons have in the past and are utilizing RASMARK Jet Charter to facilitate the transportation and laundering of the proceeds in trafficking in controlled substances. Agent Frost's statement is a total misrepresentation of the facts. Mr. Rasmusson was acquitted of any alleged "criminal" association with Jesus Flores, and the USCS, agent Frost, agent Schroeder, and agent Mills never developed one piece of credible evidence that Mark Rasmusson knew or associated with Hector Barrera. Agent Frost's statement in paragraph 126 (see App. 946) that RASMARK was double invoicing for flights relating to Ford Motor Company is untrue. This statement was based on Mr. Vargas'interview. Mr. Vargas denied making the statements and indicated his actual statements had been misrepresented.

64. I have reviewed agents Frost's Affidavit for Search Warrant relating to 11157 Leo Collins, El Paso Texas and much of the supporting documentation. Agent Frost on behalf of himself, the USCS, and the FTF knowingly provided to the court in his affidavit numerous embellished statements, misrepresentations, and in some instances total fabrications. Agent Frost also withheld important facts that would have discredited his allegations thus making an impartial, objective evaluation of his affidavit by the United States magistrate impossible.

65. I have also reviewed agent Frost's Affidavit for Search Warrant relating to RASMARK Jet Charter, 6805 Boeing Drive, El Paso Texas dated November 19, 1993 [(attachment 38); see App. 912-947]. Because the statements in the affidavit duplicate that of the Leo Collins affidavit they will not be addressed, but my conclusions remain the same: agent Frost on behalf of himself the USCS, and the FTF knowingly provided to the court in his affidavit numerous embellished statements, misrepresentations, and in some instances total fabrications. Agent Frost also withheld important facts that would have discredited his allegations thus making an impartial objective evaluation of his affidavit by the United States magistrate impossible.

66. The actions of the USCS, agent Frost, and USCS

Management officials including Michael Wilczewski, Donald Reay, and Michael Lappe, and agents and other law enforcement officers of the FTF were not reasonable or objective relating to their incorporating false facts, fabrications, misrepresentations, and gross misstatements of fact in the FTF search warrants for the Deborah Rasmusson box of records; for the Rasmusson residence at 11157 Leo Collins, El Paso, Texas; and for RASMARK at 6805 Boeing Dr., El Paso, Texas.

67. Michael Wilczewski as the supervisor of the FTF had direct supervision of agent Frost and the FTF, and approved all of the USCS reports of investigation, relating to RASMARK, the Rasmussons and Andrew Gantkessy, which were entered in the USCS system of records. Donald Reay was Michael Wilczewski's immediate supervisor for much of the time RASMARK, the Rasmussons, and Andrew Gantkessy were being investigated. Michael Lappe was the El Paso Office special agent in charge and Donald Reay's supervisor. In their depositions Michael Wilczewski and Donald Reay both acknowledge being present when Deborah Rasmusson was brought into the USCS office on May 23, 1992, and provided alcohol by agent Frost [(attachments 39 & 40)] see App. 796-834 and App. 764-795]. Michael Wilczewski also reviewed agent Frosts Affidavit for Search Warrant (page 44) relating to the box of records, and should have known the information contained in it was bogus. Because Donald Reay was also present at the USCS office on May 23, 1992, he knew that the seizure of the box and subsequent related search warrant were bogus. In addition, SAC Michael Lappe was in charge of the El Paso office and had over all responsibility to ensure that information and evidence being developed by his agents and supervisors was obtained using constitutional methods and the investigation was conducted in a reasonable and objective manner in compliance with established constitutional law enforcement procedures. Mr. Lappe, Mr. Reay, and Mr. Wilczewski, each had the same responsibility as to the "Affidavits for Search Warrants" dated November 19, 1993 prepared by agent Frost, relating to RASMARK and the Rasmusson residence. Mr. Lappe, Mr. Reay, and Mr. Wilczewski as management officials had responsibility to ensure that the investigation of RASMARK, Mark Rasmusson, Deborah Rasmusson, and Andy Gantkessy was reasonable and

objective, and a legitimate activity. Mr. Lappe knew when he signed the letter to Ford Motor Company, dated July 26, 1993 [(attachment 2); see App. 1299], that the letter to Ford was not reasonable or objective and exceeded the constitutional boundaries of legitimate law enforcement purpose. Supervisor Michael Wilczewski also admitted he reviewed and approved the same letter.

68. I have reviewed all of the USCS reports of investigation, and all of the DEA Forms 6, which those agencies have provided. In addition, I have reviewed all of agents Frost's previously discussed "Affidavits for Search Warrants." I have also conducted numerous third party interviews and taken many sworn affidavits relating to this law suit. Based on my training and experience I have concluded the following: DEA, the USCS, and the USCS FTF participants have routinely embellished, misrepresented statements and made outright lies in their reports of witness interviews; the USCS and USCS FTF participants have routinely failed to obtain evidence and information that would have discredited the allegations of money laundering, kick backs, double invoicing, tax evasion, mail fraud, and transportation of controlled substances; in an effort to punish RASMARK, Mark Rasmusson, Deborah Rasmusson, and Andrew Gantkessy. The USCS and USCS FTF participants made a series of illegal disclosures of case related information, which was completely unfounded to Ford Motor Company causing Andrew Gantkessy to lose his job, and Mark Rasmusson, Deborah Rasmusson, and RASMARK to lose their contractual relationship with Ford Motor Company; that lookouts placed by the USCS, agent Frost, and the participants in the FTF, knowing the pilots would have to consent to a search because their cargo was time sensitive, caused RASMARK aircraft to be harassed and searched; and DEA, the USCS, agent Frost, and participants of the FTF conducted an unfounded investigation of RASMARK, the Rasmussons, and Andrew Gantkessy which has lasted for a period of years, when the normal procedures and guidelines would have called for stopping the investigation.

/s/ Edward H. Wagner

State of Texas
County of El Paso

Edward H. Wagner, personally appeared before me, and first being duly sworn declared that he signed this affidavit, and further states that he has read the affidavit and the statements contained therein are true.

Sworn to and subscribed before me this 3rd day of April, 1997.

/s/ Dolores Diaz Olague
Notary Public
My commission expires on 5/5/99

[Paragraph numbers added to text]

AFFIDAVIT OF EDWARD H. WAGNER
MARCH 18, 1997

1. I, Edward H. Wagner, state that I was employed by the Department of Treasury, Internal Revenue Service (IRS), Criminal Investigation Division (CID), from November 1, 1973 until September 3, 1995 when I retired. I was a special agent/criminal investigator until October 1986 when I became a group supervisor for the El Paso office. I was a group supervisor until approximately the middle of 1990 when I was assigned on a detail to Operation Alliance. My experience includes my basic training as a special agent, annual training updates known as continuing professional education (CPE), and other specialized training relating to indirect methods of proof (utilized in income tax violations), training related to Title 31 violations and related forfeitures, and training related to Title 18 USC 1956 violations and forfeitures. Included in my basic training as a special agent I attended the Treasury Law Enforcement School, which is the basic school for all Department of Treasury special agents including the United States Customs Service (USCS).

2. I have also participated as both a special agent and group supervisor in many multi agency investigations which involved the Drug Enforcement Administration (DEA), the Federal Bureau of Investigation (FBI), the USCS, the El Paso Police Department (EPPD), and the El Paso County Sheriff's Office (EPCSO). I was assigned to the DEA, Organized Crime Drug Enforcement Task Force (OCDETF), from 1982 until 1984. During that time I participated with the OCDETF Task Force on two separate major investigations and several smaller cases. While I was assigned to the DEA, OCDETF Task Force I participated in the drafting and execution of search warrants. I was also the contact agent for the primary undercover agent , who was an IRS special agent assigned to a long term DEA, OCDETF Task Force investigation. I know that as

a group supervisor I was required to conduct quarterly case reviews with the special agents in my group. I also know that my supervisor, an Assistant Chief (equivalent to a USCS Assistant Special Agent in Charge), conducted semi annual case related reviews, and that his supervisor the Chief of the Criminal Investigation Division (equivalent to the Special Agent in Charge for the USCS) was required to conduct annual reviews, which included cases. In addition, the Regional and National Offices were also required to do annual District reviews which normally included significant case activity. Among the items a management official of the IRS Criminal Investigation Division would look at in reviewing a cases are; the timelines involved in resolving the investigation, the progress being made toward meeting the investigative goals, and the quality of the evidence obtained. Both agents and managers are evaluated on how well the cases are being managed. The same case criteria is also employed by the Regional and National offices when conducting District reviews.

3. I was retained by Attorney Sandra Sheppard to assist in the law suit involving Mark Rasmusson, Deborah Rasmusson, Andrew Gantkessy, and RASMARK Jet Charter, Inc. on August 8, 1996. As part of my duties and responsibilities I reviewed all the USCS reports of investigation, all DEA Forms 6, agent and Lawrence Frost's affidavits for search warrants including: a search warrant dated May 26, 1992 relating to a cardboard file box; a search warrant dated November 19, 1993 relating to 11157 Leo Collins Drive, El Paso, Texas; and a search warrant dated November 19, 1993 relating to the offices of RASMARK Jet Charter, Inc., 6805 Boeing Drive, El Paso, Texas. The reference records were received pursuant to discovery relating to the lawsuit. I have also reviewed a photocopy of an affidavit, [(attachment 1); see App. 1292] by William Cole, dated July 10, 1992 (William Cole is the attorney for Lori Nelson, Mark Rasmusson's former wife), and three documents provided by Ford Motor Company to Andrew Gantkessy through the U.S. Equal Opportunity Commission including; a letter from the USCS dated July 26, 1993 to Ford Motor [(attachment 2); see App. 1299], a memorandum styled "Meeting with U.S. Customs "dated August 18, 1993 [(attachment 3); see App. 1304], and a memorandum styled

"Meeting with U.S. Customs and El Paso Police" dated September 24, 1993 [(Attachment 4); see App. 1305].

4. Through my experience and training, I know it is improper to disclose case related information to non law enforcement third party witnesses. When I attended the basic Dept. of Treasury special agent training school I was taught that it was improper and illegal to disclose case related material to a non law enforcement organization or person. An agent is authorized to make an investigative disclosure for the purpose of obtaining information relevant to his investigation. The standard is that an agent only disclose the minimum information necessary to obtain the information required. In an official Dept. of Treasury training document (See App. 1319), a student text states "Caution should also be exercised in your investigations to see that your disclosures are only for the purpose of obtaining information necessary to your case. You should not merely give information to the recipient or merely speculate or indulge in idle rumor or discuss the taxpayer's affairs. In the 1981 decision Jimmie D. and Cheryl Robers and Jim's Water Service, Inc. Larry R. Hyatt 697 F2d 899 (10th Cir), the jury found that Mr. Hyatt repeated rumors that went beyond the disclosures necessary to the investigation.

5. A final word on investigative disclosures involves the use by the recipient of any information you disclose in the course of your investigation. There is no restriction on further disclosure by the witness or recipient. This can have severe repercussions in sensitive cases. So remember to limit your investigative disclosures to the extent necessary to conduct a proper investigation."

6. Attachment 1 (see App. 1292) is the affidavit of William Cole, an attorney representing Lori Nelson, dated July10, 1992, regarding a child visitation matter. The affidavit states in part "there was an ongoing investigation of the Rasmussons by federal authorities concerning alleged criminal activities relating to criminal charges which had previously been dismissed. Mr. Frost stated that the charges had been dismissed during the trial because a witness

failed to appear and testify." The affidavit also states agent Frost made the following disclosures: "within the previous 30 days Debra Rasmusson had come into his office high on controlled substances and had admitted that she was addicted to controlled substances and had been for many years. She also told Mr. Frost that she was carrying a weapon because she thought her husband, Mark Rasmusson and his friends were trying to kill her because she was a security risk." Each of the referenced disclosures were made by agent Frost to Mr. Cole. There also is no evidence that a key witness failed to appear and testify. It should be noted there is no indication that agent Frost ever asked Mr. Cole for any information, or that he prepared a report relating to this contact.There is no investigative purpose to the disclosures. The disclosures made by agent Frost clearly exceed the Dept. of Treasury standard and were clearly made with a vindictive and malicious purpose to punish the Rasmussons because Deborah Rasmusson refused to sign a consent to search form for the offices of RASMARK when she was detained and interviewed on May 23, 1992.

7. Attachment 2 (see App. 1299) is a letter from the USCS dated July 26, 1993 to Ford Motor Company, signed by Special Agent in Charge Michael Lappe. In his sworn deposition agent Frost acknowledged that he wrote the letter. The disclosures contained in the letter far exceed the standard of "limit your investigative disclosures to the extent necessary to conduct a proper investigation [(attachment 5); see App. 1319]." The opening paragraph to the letter states "The United States Customs Service, Office of the Special Agent in Charge, El Paso, Texas is currently engaged in a conspiracy investigation of one of Ford Motor Company's contract carriers , Rasmark Jet Charter Inc. The investigation involves alleged violations of numerous federal statutes." What agent Frost then provided to Ford was a summary of his investigation as it related to the allegations against the Rasmussons, RASMARK, and Andrew Gantkessy. In fact, included in the letter is the following statement "The following is a brief synopsis of the evidence obtained thus far which indicates a conspiracy to commit fraud by Rasmark and Mr. Gantkessy." Included in the many outrageous disclosures are the following: "As of this date Special Agents have collected irrefutable

evidence that Mr. Gantkessy has in fact received several thousand dollars in free aircraft charters and cash payments from Deborah Rasmusson...Deborah Rasmusson offered him $5,000.00 per Ford charter which Mr. Gantkessy dispatched through Rasmark...Mr. Gantkessy stated that he was taken on a total of four trips to Las Vegas by the Rasmussons on Rasmark aircraft.. to the Super Bowl...All of these trips and attendant accommodations were at no cost to Mr. Gantkessy. Mr. Gantkessy stated that he was told by Deborah Rasmusson that if anyone should ever questioned his trips on Rasmark aircraft, he was to tell them that the trips were for charters for which he had paid Rasmark and she would provide false invoices to him for verification." There are other related disclosures to Ford in the letter. In my years as a special agent I have never provided any third party witness a "synopsis" of my evidence or told a non law enforcement person or entity that I had "irrefutable" evidence of a violation.

8. In his sworn declaration, agent Frost attempted to explain the Ford letter [(attachment 2); see App. 1299]. Agent Frost states the following: "I prepared for the signature of Special Agent in Charge Michael Lappe the letter sent to Ford Motor Company to assist that company in understanding the scope and nature of the ongoing investigation and what type of information was relevant to the subpoenas it had received. The letter was sent to the Staff Security Investigations section of the company for this limited law enforcement purpose. It is also noted that the information subpoena served on Ford Motor Company was of such a complexity that I decided to send Hector Barrera, a Customs Service Auditor, to Ford World Headquarters to assist in the search and retrieval process."

9. Agent Frost in his sworn deposition stated that his supervisor Michael Wilczewski reviewed the July 26, 1993 USCS letter to Ford Motor Company. In response to whether he normally provides synopsis of his investigations to parties other than law enforcement agencies agent Frost replied no. Agent Frost also stated that he never requested copies of the documents that were subpoenaed by the FBI from Ford Motor Company because they were seized under an administrative subpoena and he preferred not to go

that route.

10. FBI Special Agent Joe Acosta stated the FBI issued an administrative subpoena on Ford Corporation headquarters on January 28, 1993 to determine the volume of business that RASMARK was doing with Ford. Ford Motor Company provided the subpoenaed records two to three months after the subpoena was issued (not later than April 1993). Agent Acosta also stated he didn't think Frost had requested that the FBI issue the subpoena, but he told agent Frost it was something the FBI could do, and he (Frost) said fine. He personally received the records and briefly reviewed them. Agent Acosta said he made copies of the subpoenaed records which he provided to Customs.

11. Agent Frost's declaration that he forwarded the July 26, 1993 letter to Ford in part to assist them in understanding the nature of the ongoing investigation and the type of information that was relevant to the subpoenas it had received is inconsistent with FBI Special Agent Joe Acosta's deposition as it relates to the FBI administrative subpoena, because the FBI received the records months before agent Frost forwarded the July 26, 1993 letter. Because the records had already been received no additional explanation was necessary. As previously noted the July 26, 1993 USCS letter to Ford Motor Company far exceeds the investigative disclosure guidelines and is both vindictive and malicious in nature, and the USCS and Agent Frost knew that the letter would cause RASMARK to lose its contractual relationship with Ford Motor Company and would furthermore cause Andrew Gantkessy to lose his job with Ford.

12. Attachment 3 (see App. 1304) is a memorandum styled "Meeting with U.S. Customs" dated August 18, 1993 relating to a meeting between Agent Larry Frost, and Ford employees Phil Asiala and Tim Pomaville. The memorandum states the intent of the meeting was an opportunity for Mr. Frost to explain the position of U.S. Customs in this matter, as it relates to Andy Gantkessy and RASMARK Charters.

13. The memorandum also states the following: "Mr. Frost indicated that Gantkessy was deeply involved with the Rusmussons and Rasmark charters, and described pertinent testimony that implicates Gantkessy in accepting money, air transportation, and other forms of kickbacks from Rasmark. He further explained that there are 11 full-time federal agents from other departments within the Federal Government that are assigned on a full time basis to investigating this case. Their investigation centers around drug trafficking over the border from Mexico to the United States. He indicated that he could not discuss the investigation, nor could he reveal any other details, however, he assured us that Mr. Gantkessy has become a part of the investigation." Information obtained during the recent depositions of the defendants clearly disputes there were 11 full-time federal agents from other departments. That statement by agent Frost to the Ford officials was for the sole purpose of impressing them with the magnitude of his investigation.

14. When questioned about his meeting with Pomaville and Asiala during his deposition, Frost made the following statements regarding his disclosures: "I can't say if that's factual or not. I don't recall." Also "I don't recall if I told them that. I had evidence of that." Frost also stated "I don't believe I did, no...It's possible that it was discussed, but I don't know how much detail they were provided with."

15. The memorandum does not reflect that agent Frost ever asked the Ford officials for any records or information. In addition, there is no indication that Agent Frost prepared a report of this contact with the Ford officials. Therefore there was no investigative purpose related to the contact. The referenced disclosures were vindictive and malicious as they related to the Rasmussons, RASMARK, and Andrew Gantkessy.

16. Attachment 4 (see App. 1305) is a memorandum styled "Meeting with U.S. Customs and El Paso Police" dated September 24, 1993. The memorandum relates to a meeting between USCS Agent Fred Schroeder and a member of the El Paso Police Department (Officer James Holland), and Ford Motor Company officials. The memorandum

contains numerous disclosures including the following: "speak with Hunter from the air charter service known as Kitty Hawk. He knows a lot about the activities of Rasmark and Andy Gantkessy. He knew a lot about Gantkessy's corrupt activity even though he may not be subject to criminal prosecution...however, that Andy will most likely have major problems with the IRS because it will be established that he has been receiving payoffs from Rasmark, and naturally, did not claim any of it. They describe Hunter as a willing participant who will quickly describe his knowledge of Gantkessy's cheating Ford out of large amounts of money and stating, 'don't worry about it'. In one of Mark Rasmusson's moments of anger over a pending divorce he made the statement to Hunter that Andy got paid of 'big time'." These disclosures were made by agent Schroeder to the Ford officials.

17. The memorandum further reflects the following disclosures by Agent Schroeder: "Schroeder also states that it is important for us to know that the second meeting that they had with Gantkessy was at the request of Gantkessy, and he volunteered all of the information. He was not asked, threatened, or coerced into saying anything, but came in voluntarily and admitted receiving marijuana from Debbie and $9,000 in cash, which did not include flights, gifts, lodging or any other costs of travel. He gave specific answers to questions and expounded on what he did. He stated that he knew he was violating Company rules. He said, 'I'll cooperate, just don't tell Ford. I'll lose too much. I'll wear a tape recorder if you want, but just don't tell Ford'.

18. It should be noted that he admits cheating on shipments by using more airplanes and other items to boost Rasmark profits.

20. THESE AGENTS REMINDED US OF ONE VERY IMPORTANT ISSUE. GANTKESSY CANNOT TAKE THE STAND AND TESTIFY ON ANY OF THESE ISSUES IF HE WERE TO BRING A LAWSUIT AT FORD, BECAUSE IT'S A CRIMINAL OFFENSE TO LIE TO FEDERAL AGENTS. IF THE ISSUE GOES TO COURT HE WILL END UP BEING PROSECUTED FOR FALSIFYING INFORMATION TO THE

FEDERAL AUTHORITIES. THEY ARE STILL COOPERATING AND WILLING TO TESTIFY TO GANTKESSY'S PARTICIPATION IN ACTIVITIES OF RASMARK."

20. The memorandum does not indicate that agent Schroeder or officer Holland ever sought to obtain any information or records from the Ford Motor Co. officials, therefore the disclosures had no investigative purpose and are improper. Even if agent Schroeder and officer Holland had requested information the disclosures far exceed the Dept. of Treasury standard and are both vindictive and malicious.

21. Agent Schroeder's disclosures are also inconsistent with his Report of Investigation relating to his interviews with Gantkessy on June 2 and June 3, 1993 [(attachment 6); see App. 1093]. Schroeder's report makes no mention that the second meeting with Gantkessy was at Gantkessy's request or that Gantkessy volunteered the information. In addition, his report makes no mention Gantkessy stated he knew he was violating company rules, or that he (Gantkessy) would cooperate and wear a tape recorder. I know an agent is required to document all pertinent facts provided by a witness. Andrew Gantkessy has denied the statements attributed to him. Gantkessy stated the statements were the agents' words, but because he was sick he finally told the agents, whatever you say or words to that affect. Andrew Gantkessy had previously suffered a stroke and had open heart surgery.

22. Included on all USCS Reports of Investigation is the following statement all in caps: **"OFFICIAL USE ONLY THIS DOCUMENT IS LOANED TO YOU FOR OFFICIAL USE ONLY AND REMAINS THE PROPERTY OF THE OF THE US CUSTOMS SERVICE. ANY FURTHER REQUEST FOR DISCLOSURE OF THIS DOCUMENT OR INFORMATION CONTAINED HEREIN SHOULD BE REFERENCED TO HEADQUARTERS, US CUSTOMS SERVICE TOGETHER WITH A COPY OF THE DOCUMENT** [(see Attachment 6); see App. 1093]." Of course this is the USCS standard when they disclose information to law enforcement agencies, the Department of Treasury standard for non law enforcement agencies and persons is even more

restrictive.

23. Having reviewed the referenced disclosures and related documents, and based on my experience and training, the disclosures made to Ford Motor Company in the letter dated July 26, 1993 [(attachment 2); see App. 1299], to the Ford officials during meetings on August 18, 1993 and September 24, 1993 [(attachments 3 and 4); see Apps. 1304-1305], and to William Cole [(attachment 1); see App. 1292] far exceed the normal procedures and policies of Federal Law Enforcement agencies. In addition, many of the disclosures by agent Frost and the USCS had no investigative purpose and were made with a vindictive and malicious purpose causing RASMARK to lose it's contractual relationship with Ford Motor Company, and Andrew Gantkessy to lose his job and a major portion of his retirement with Ford Motor Co.

/s/ Edward H. Wagner

State of Texas
County of El Paso

Edward H. Wagner, personally appeared before me, and first being duly sworn declared that he signed this affidavit, and further states that he has read the affidavit and the statements contained therein are true.

Sworn to and subscribed before me this 18th of March, 1997.

/s/ Dolores Diaz Olague
Notary Public
My commission expires on: 5/5/99

AFFIDAVIT OF HENRY A. WEBB

APRIL 3, 1997

My name is Henry A. Webb. I am a citizen of the U.S and I reside in Canutillo, TX. This affidavit is being made at the request of Attorney Sandra Sheppard, Attorney for Mark Rasmusson, et al.

This affidavit will be a supplement to the affidavit previously submitted on 3-18-97 and is made part of this affidavit. The aforementioned affidavit listed my background, work history, and the basis for my qualification as a expert witness in the area of law enforcement investigations. (See attached affidavit, encl.#A for information in that area.)

The 3-18-97 affidavit primarily addresses the issue of privacy act violations and disclosures. That subject will not be readdressed in this affidavit.

Enclosures in this affidavit , after enclosure A,(see App. 1414) will begin with enclosure #13 (see App. 966) where the enclosures in enclosure A end with number #12 (see App. 1292).

The following acronyms are used through out this affidavit:

DEA- Drug Enforcement Administration
EPPD- El Paso Police Department
EPSO- El Paso Sheriff's Office
FBI- Federal Bureau of Investigation
FTF- Financial Task Force
IRS- Internal Revenue Service
L/O- Look out
SW- Search Warrant
USI&NS- United States Immigration & Naturalization Service
USCS- U.S. Customs Service

Although many actions of several defendants in this case are

subject to critical review, this affidavit will address only the following events or actions:

1. The procedure normally followed when a new criminal investigation is initiated, particularly when the investigating agency is a federal law enforcement agency.

2. The actions and misconduct of El Paso Police Officer George Salas.

3. The interviews of Andy Gantkessy and subsequent pressures to force him to become an informant for the USCS FTF.

4. The procedures for placing and utilizing "look outs" through the federal law enforcement agencies on the Mexican Border.

5. The surveillance procedures used by the USCS FTF during the extended surveillance of the Rasmark business on Boeing Dr.

6. Procedures followed by the USCS FTF members while conducting "trash pick-ups" at the Rasmusson residence on Leo Collins Dr and Dale Douglas.

7. The supervision issue throughout the entire Rasmark investigation.

8. The credibility issue:
   a. In reports
   b. In declarations and affidavits

Items 4 through 8 will be addressed using Agent Frost's affidavit for search warrant dated 11-19-93.

PROCEDURE NORMALLY FOLLOWED WHEN OPENING A NEW INVESTIGATION

Although there is no universally required procedure for actions

necessary in opening a new investigation, it is my opinion that at the very least, the following actions should be taken:

1. Review all available data bases , first through your own agency and then all other data bases available to you. Such reviews serve two purposes. First, they help assure that your investigation will not interfere with or jeopardize another investigation, possibly more important than your own, being conducted by some other agency or by your own agency in another area. There is also the safety factor of avoiding one agency unknowingly investigating another agency through parallel investigations, particularly important in undercover cases.

The second purpose is to offer other agencies an opportunity to assist you with information from their case files, if they so desire. Other agencies may have useful information which is not available through shared data bases. They may also offer to participate in your investigation by sharing manpower, informant information, or other resources.

In the Rasmark case, DEA had conducted a fairly extensive investigation of Mark Rasmusson during the Flores case. Agent Frost made no effort to meet with DEA Agents Lenox and Perkins to discuss their investigation of Mark Rasmusson. Had he done so, he would have learned that:

l. DEA did not consider Mark Rasmusson to be a "major player" in the Flores case. [(See enclosure #13); see App. 966-968].

2. Some of the DEA-6 reports prepared by Agent Perkins, i.e. the interviews of Pilot Jerry Burnett and CPA Albert Apodaca, contained information which was misleading or incorrect. Agent Frost later used these same DEA-6s and assumed that the information contained therein was accurate.

3. That DEA never developed any information that Rasmark planes were ever used to transport narcotics.

4. That DEA never developed any reliable evidence that Mark Rasmusson was involved in money laundering.

Agent Frost's reluctance to discuss his case with the DEA Agents Lenox and Perkins was at the very least shortsighted and unprofessional.

ACTIONS AND MISCONDUCT OF EPPD OFFICER GEORGE SALAS

[Paragraph numbers added to text]

1. In January, 1992, Officer Salas responded to a call regarding a death threat. Officer Salas states this was the first time he met Mr. or Mrs. Rasmusson. Mr. Rasmusson had received a death threat which was recorded on his answering machine. Mrs. Rasmusson gave the tape to Officer Salas who played the tape for his Lieutenant Jensen. Lt. Jensen kept the tape and advised that the death threat was serious and that Mr. and Mrs. Rasmusson required protection. However, no investigation was carried out by Officer Salas or supervisor Jensen to identify the caller. It should be noted that Jensen was previously a supervisor in the EPPD narcotics unit and in the multi county task force.

2. Although Officer Salas may have merely had a chance encounter with Mark and Deborah Rasmusson when he was dispatched to their office in regards to a threatening phone call in January, 1992, the facts in this case lead to a reasonable inference that the encounter was planned and carried out by the FTF.

3. Assuming that Mr. Salas was not aware of the investigation being conducted by USCS FTF, it may have been proper for him to offer his services as a private security guard to Mrs. Rasmusson. However, when he learned through an FBI Agent friend that the Rasmussons were the subjects of a federal criminal investigation, it was definitely improper for him to continue his employment with Mrs. Rasmusson. I am surprised that the EPPD allowed him to do so, if his superiors were properly advised of appropriate details.

4. The fact that Salas' remained in the employment of Mrs. Rasmusson under these circumstances; the fact that no follow up investigation was conducted as to the source of the death threat; and the inquiries by narcotics Sergeant McBain to Salas about the Mr. and Ms. Rasmussons indicates that EPPD supervisors were aware that the Rasmussons were investigative targets and authorized Salas to act as an undercover agent to obtain information on the Rasmussons for the FTF.

5. Not only did Salas accept money from Mrs. Rasmusson, $20 per hour, he continued to heighten her fears regarding her own safety. He made numerous unannounced , uninvited visits to the Rasmark business and to the Rasmusson residence. These visits and the opportunity afforded to spend time alone with Mrs. Rasmusson while on "protective assignments" eventually led to the sexual seduction of Mrs. Rasmusson by Officer Salas.

6. During the time Salas was accepting money for "protecting" Mrs. Rasmusson, he was furnishing information about the Rasmussons to Agent Frost. There is no question that Salas was acting in an undercover capacity and his activities were coordinated by Agent Frost, at the USCS FTF. I feel certain that neither the EPPD or any other law enforcement agency would allow one of their officers to perform body guard duties for anyone who was the subject of a major, task force investigation. Therefore, it is reasonable to conclude that EPPD supervisors were aware of the undercover work being carried out by Salas for the FTF and approved the work.

7. Officer Salas certainly violated the professional law enforcement code of ethics when he initiated the sexual affair with Mrs. Rasmusson.

8. If the EPPD allowed Salas to continue providing protection for Mrs. Rasmusson so that he could continue to provide information to the USCS FTF, then he, Salas, was actually acting as an "on duty"

police officer in an official undercover role. In the latter case, it would have been improper for him to receive payments from Mrs. Rasmusson, unless the money was turned over to the EPPD.

9. In either scenario, Officer Salas was functioning as an undercover agent for the USCS FTF and all his activities while in that role should fall into the "official duty" category. His conduct with Mrs. Rasmusson was highly unethical and unprofessional.

10. Officer Salas used his position of trust with Mrs. Rasmusson to direct her to Agent Frost and other USCS agents on 5-23-92 with a box of Rasmark business records. Through Salas' cooperation with Agent Frost, Mrs. Rasmusson was interviewed for several hours at the USCS office on Viscount. During the lengthy interview, Mrs. Rasmusson was provided a six-pack of beer by one of the USCS agents. See pages 16-17 below for details regarding the interrogation of Mrs. Rasmusson at the USCS office.

11. It is clear from the actions of Officer Salas as related to Mrs. Rasmusson were coordinated through Agent Frost. There are some serious questions raised regarding what other actions Salas took while in the Rasmusson residence and some indication what [sic] he may have obtained keys to the Rasmusson residence and the Rasmark office.

THE INTERVIEWS OF ANDY GANTKESSY AND SUBSEQUENT EFFORTS TO FORCE HIM TO BECOME AN INFORMANT FOR THE USCS FTF.

12. Andy Gantkessy had been a Ford Motor Co. employee for over 24 years by October 1993. From 1984 to 1993, he received ratings of excellent or excellent plus. [(See enclosure 14); see App. 1302].

13. On June 2, 1993, Mr. Gantkessy was surprised at his office in the Ford-Favesa building by Agents Larry Frost, Fred Schroeder, Larry Brown, FBI Agent Joe Acosta, and EPPD Detective James Holland. Mr. Gantkessy, a recovering stroke victim and heart patient, [App. 1420 omitted]

was confronted in a very aggressive manner by the officers.

14. According to Mr. Gantkessy, he was threatened with immediate arrest if he refused to talk to the agents or if he insisted on calling a lawyer. He was told by the agents that they had been following him and knew every move he made, including where and when he went to the bathroom. Mr. Gantkessy stated that the agents questioned him very aggressively for several minutes making numerous threats to arrest him or have him fired by Ford.

15. After several minutes of intense interrogation and badgering by the agents, Mr. Gantkessy finally caved in and said. "OK, anything you say". In so doing, he admitted to all the allegations of which the agents were accusing him. One of the allegations was that Deborah Rasmusson paid him $5,000.00 per flight for each Ford flight booked through Rasmark. He stated that this statement could not have been true since most of the Rasmark charters only cost between $2,000.00 and $3,000.00. The $5,000.00 figure was furnished by Agent Frost and is ridiculous on it's face.

16. Mr. Gantkessy stated that when he admitted all the allegations "thrown at him" by the agents, they agreed to allow him to leave the room. He stated he was extremely nervous and felt that he might have another heart attack. Mr. Gantkessy's condition after the interview was confirmed by Ford employee, Beverly Enriquez, who was concerned about his health. Mr. Gantkessy went directly home after the interview and his wife made an appointment for him so see his Doctor either that afternoon or early the following morning.

17. Prior to being allowed to leave the room after the June 2, 1993, interrogation, Mr. Gantkessy was told to report to the USCS office on Viscount the following day, June 3rd, for another interview. He was threatened with arrest if he failed to appear on June 3rd.

18. The following day, June 3, 1993, Mr. Gantkessy was interrogated by USCS Agent Fred Schroeder and FBI Agent Joe Acosta. Mr. Gantkessy stated that Agent Schroeder controlled the interrogation

and asked most of the questions. Most of the questions were directed at the activities of the Rasmussons and the Rasmark business. Agent Schroeder also asked Mr. Gantkessy if he would be willing to wear a "wire" and record conversations with the Rasmussons. Mr. Gantkessy told the agents that he would think about wearing the " wire" and that he would give them his answer the following day.

19. Agent Schroeder also asked Mr. Gantkessy to make a call from Schroeder's office to Mark Rasmusson and allow Schroeder to record the conversation. Agent Schroeder even told Mr. Gantkessy that he, Schroeder, would tell Mr. Gantkessy what to say. Mr. Gantkessy declined to make the call.

20. Prior to being allowed to leave the USCS office, Mr. Gantkessy was threatened again by Agent Schroeder. Those threats included arrest and losing his job with Ford. Agent Schroeder assured Mr. Gantkessy that if he "cooperated" nothing would happen to him.

21. The following day Mr. Gantkessy visited two El Paso lawyers, Mr. Tony Silva and Mr. Bernard Panetta and told them of the threats made by Agent Schroeder. Both advised Mr. Gantkessy not only to refuse to record any conversations but also to refuse to cooperate with any of the agents in any manner. When Mr. Gantkessy phoned Agent Schroeder and told him that he, Gantkessy, would not "cooperate" with the FTF, Agent Schroeder allegedly told Gantkessy that the agents would start "playing hardball".

22. There is a direct conflict between the testimony offered by Mr. Gantkessy and that of the agents involved in the June 2nd and June 3rd interviews with him. There is also a serious conflict between the testimony offered by FBI Agent Acosta and the other agents, particularly the USCS Agents Frost and Schroeder.

23. Agent Frost alleges that no threats were made against Mr. Gantkessy during the June 2 interview. When asked why five agents were allowed to be present during the interview, Agent Frost stated that he, Frost and Agent Acosta went to Gantkessy's office to do the interview. "When we,(Frost and Acosta) started to go into the building,

we just--all of a sudden, everybody else was there, too . And that's the way that occurred."[(See encl #15, pgs 115-116); see App. 453, pgs 115 -116).

24. FBI Agent Acosta stated in his declaration of 7-31-96 that 6 or 7 members of the task force conducted the June 2nd interview with Mr. Gantkessy. He stated "There were more officers present than would usually be necessary to conduct an interview because the members represented various agencies with different, individual interests in potential money laundering violations."[(See encl #16, Pg 3); see App. 1028, para 11].

25. Neither explanation offered by Agents Frost or Acosta are adequate. In all my professional law enforcement career, I never participated in such an interview with more than three officers present. The "normal rule' used by the FBI and most other law enforcement is to use no more investigators than is absolutely necessary. Two investigators is the generally accepted number. The presence of five agents is, in itself, intimidating and should cast doubt on the admissibility of any confession or admission obtained under such conditions. There was no valid law enforcement purpose for having so many agents present during the interview.

26. Agent Frost stated that the agents simply followed him , Frost, into the room. Agent Frost was the senior agent on the scene. He should have selected one other agent to assist him with the interview and ordered the other agents to remain outside the building. Agent Acosta's explanation that the other agents from other agencies had an interest in the case and were there for that reason is also flawed. There were three agents present from USCS, Agents Frost, Schroeder, and Brown. Certainly USCS needed no more than one agent in the interview. Detective Holland from the EPPD likewise had no reason to participate in the interview.

27. Agent Frost stated that his original intent was for the interview to be conducted by Frost and FBI Agent Acosta. Testimony during depositions with defendants, Schroeder, Frost, Acosta, and Holland indicates that only Agent Schroeder took notes during the

interview and that most of the questions were asked by Agent Frost. There was no reason for five or more agents confronting Mr. Gantkessy other than to inflict shock. It is reasonable to infer that the purpose of having five or seven agents confront Mr. Gantkessy was to keep Mr. Gantkessy off balance, threaten, interrogate, intimidate and coerce Mr. Gantkessy into admitting exactly what the FTF agents wanted Mr. Gantkessy to say about the Rasmussons.

28. Agents Frost and Schroeder stated in depositions the interrogation of Mr. Gantkessy lasted only a few minutes, possible 15 minutes of [sic] less. Agent Acosta stated that the interrogation lasted between 30 and 45 minutes. [(See enclosure #17, pg 57); see App. 691] Agent Schroeder made a written report of the June 2, 1993 interview. [(See encl #1); see App. 1093].

29. Agent Schroeder's account of the June 2 interrogation is only six lines long. [(See pd 2 of encl #1); see App. 1094]. No mention is made by Agent Schroeder of any attempt to secure Mr. Gantkessy's cooperation. Certainly in a 30 to 45 minute interview, the contents of the interview would require more than six lines to report. Based upon Mr. Gantkessy's statement that the agents told him that they had been following him and the agents' admissions that they had in fact followed him, and the FTF agents lack of veracity and conflicting testimony, I believe Mr. Gantkessy's version of the facts.

30. Although Agents Frost and Acosta have stated in their depositions that they suspected that Mr. Gantkessy might have been involved in "kick-back" violations with Rasmark, it appears there was never any intent of the FTF agents to seriously investigate those allegations. USCS has no jurisdiction over "kick-back" statutes. FBI Agent Acosta, whose agency does have such jurisdiction, stated that he did not conduct any follow up investigation based upon the "kick-back" admissions made by Mr. Gantkessy during the June 2-3 interviews. It is noted that those Ford employees at El Paso who would have been key witnesses in any such investigation, namely Beverly Enriquez and Manuela Barron, were never interviewed by any agent from the FTF.

31. Agent Schroeder stated in his deposition that Mr. Gantkessy volunteered to come to the USCS office on June 3rd for the second interview. Agent Schroeder even told Ford officials that Mr. Gantkessy "asked to come to the USCS" for the June 3rd interview.(See encl #3); see App. 1305].

32. Agent Schroeder's testimony is directly contradicted by that of FBI Agent Acosta who stated that either he, Acosta, or Schroeder phoned Mr. Gantkessy and asked him to come to the USCS office for the June 3rd interview.(See encl #17, pg 57); App. 691]. Agent Acosta also stated in his deposition that during the interview on June 2, Mr. Gantkessy was asked to "assist" the task force. [(See encl #18, pgs. 51-52); see App. 682]. Agent Acosta also stated that in the June 3rd interview Mr. Gantkessy was asked "if he wanted to cooperate",(See encl #2, pg. 58); see App. 693]. Gantkessy replied that he would be willing to "do whatever he could".

33. It is noteworthy that Mr. Gantkessy was never advised of his rights or told that he did not have to talk to the agents. He had been under surveillance for at least two days and had become the focus of attention of the FTF. Since there was little or no effort to conduct any investigation of the "kick-back" statute violations the only other interest the FTF had in Mr. Gantkessy must have been to develop him as an informant. A majority of the testimony leads to that conclusion. Mr. Gantkessy's claim that Agent Schroeder asked him to wear a "wire" is certainly more credible than Agent Schroeder's denial of same. Mr. Gantkessy's statement that he discussed the request with two lawyers, Mr. Silva and Panetta, before making his decision not to comply with Agent Schroeder's requests, certainly lends further credibility to Mr. Gantkessy's version of the facts.

34. Agent Acosta stated that he, Acosta, prepared his own written reports of the June 2-3 interviews with Mr. Gantkessy and submitted them to his FBI supervisor. Although these reports have not been made available to the plaintiffs, I believe that Agent Acosta's reports will cast more doubt on the veracity of both Agents Frost and Schroeder.

35. Since the disclosure and privacy issue is discussed in detail in the attached affidavit,(Encl A), it will not be addressed here. Suffice to say, there was absolutely no legitimate purpose for the release of extensive case information to Ford Motor Co. by Agents Frost, Schroeder, and SAC Lappe. The facts indicate that their intent was to punish Mr. Gantkessy for his refusal to "cooperate" and to sever the business connection between Ford and Rasmark. Agent Frost's arguments to the contrary are simply invalid and are contradicted by the testimony of Agent Acosta and other witnesses.

THE 'LOOKOUT' ISSUE

36. I have placed "lookouts", (L/O) on many occasions with USI&NS, US Border Patrol, and the USCS. I placed L/Os as an FBI Agent working border cases and as a Drug Task Force supervisor in a multi-county drug task force. I am aware from my experience that there are various types of L/Os. The lowest level is a "silent hit". This simply allows the person or vehicle to pass but the person placing the L/O is notified of the details, date, and time of the entry at a POE or passing through a BP inspection check point.

37. The next level would be to search the vehicle or person in a "routine "manner but not indicate that they were the object of a L/O. The next higher level would be an extensive search of both the person and conveyance. A L/O may also be placed to arrest an individual or to seize a conveyance.

38. In every L/O I have ever placed, I have been required to give my name, title, and a phone number where I could be reached on a 24 hour basis. There is usually a time frame placed on every L/O. The time may range from a few hours up to 30 days. When I placed long term L/Os, I was asked to renew them on a 30 day basis.

39. Based upon the frequent searches conducted on the Rasmark planes and the manner in which the searches were conducted, I believe that there was an extended period , possibly 1988 to 1994, when Rasmark planes were the subjects of L/Os, probably placed by

USCS agents in El Paso.

40. Some of the more obvious cases are: The Brownsville search on 10-6-88. Pilot Jerry Burnett and the crew were accosted at gunpoint by a group of Border Patrol agents who stated they were acting under authority of US Customs. Pilot Burnett and the crew were held at gunpoint while the plane was searched thoroughly. This, despite the fact that the flight was a domestic flight and had not been outside the U.S.

41. As a former Border Patrol Agent, I would never have conducted such an aggressive search without specific L/O information indicating that the plane would probably contain drugs and that the crew might be armed. It is my expert opinion that this was a L/O search probably placed by USCS personnel in El Paso.

42. Another such search was conducted of a Rasmark plane, crew, and passengers at Vancouver, BC, Canada in 1990 or 1991.(See encl #19); see App. 368]. Mr. Yaber [sic] stated that the pilot, crew and passengers were strip searched by Canadian officers who kept asking, "Where are the drugs?"

43. I lived in Montana on the U.S. Canadian border from 1971 to 1978. During that time I had liaison duties with the Canadian Provinces of Alberta and Saskatchewan and I crossed the Canadian border on a regular basis. My wife was born in Canada and we have traveled there to visit her family regularly since 1960. The actions of the Canadian officers were not normal actions taken by Canadian officers in a routine Customs inspection. It is my expert opinion that the Canadian officers search was based on a L/O placed by an American federal law enforcement agency, most likely USCS El Paso.

44. On 6-16-93 a Rasmark plane landed at Dallas Love Field to refuel. The plane was immediately surrounded by armed officers from the Dallas PD and USCS. [(See encl #20); see App. 350]. The pilot, Mr. Jackson, and crew were removed from the plane at gunpoint and handcuffed. Mr. Jackson was forced to sign a consent search form for the plane or remain overnight while a search warrant was obtained

the following day. A search of the plane by the agents using a "drug dog" revealed absolutely nothing illegal.

45. During the above search., Mr. Bertilsson, the co-pilot was handcuffed and held at gunpoint. When the pilot and crew were released , one of the agents remarked that the plane had been searched because the agents received information that "the plane needed searching". The agent also stated that "Rasmark was on a hit list".

46. There is no doubt in my mind that this search was another L/O based search. Since the flight had not been outside the U.S. and was purely a domestic flight, the L/O information must have been conveyed to the Dallas agents on the date of the search. Otherwise, they would not have been ready and organized to perform the search.

47. ON [sic] 11-10-92 Deborah Rasmusson and a Rasmark employee, Blanca Avelar, were returning to El Paso from Juarez. When they arrived at the POE Ysleta, their vehicle was referred to secondary and searched thoroughly. The officers claimed that they found 1/10 gram of marijuana and a switch blade knife in the vehicle. Both Mrs. Rasmusson and Ms Avelar were handcuffed, strip searched, and detained at the POE.

48. USCS Agent Frost was notified of the incident and he immediately responded to the POE accompanied buy USCS Agent Eric Mills. The fact that the USCS Inspector notified Agent Frost of the search and detention indicates to me that the search was based on a L/O and the person placing that L/O was Agent Frost.

49. Agents Frost and Mills attempted to interview Mrs. Rasmusson and Ms. Avelar, although neither of them were advised of their Miranda rights. When Mrs. Rasmusson refused to "cooperate" with Agent Frost, the EPPD was notified and two EPPD officers came to the POE and arrested both women. Ms. Avelar was arrested on outstanding traffic warrants and Mrs. Rasmusson was arrested for possession of a prohibited weapon, a switchblade knife , a misdemeanor offense. Mrs. Rasmusson was transported to the EPPD East Valley Station where she was strip searched again, detained for several hours,

and finally released after being issued a misdemeanor summons.

50. Based upon my experience as an FBI Agent working border cases and my experience as a drug task force supervisor in El Paso, I know that, barring unusual circumstances, persons are not arrested for possession of 1/10 gram of marijuana or a switchblade knife. I have witnessed many occasions at the Ports of Entry where individuals returning from Mexico have been in possession of switchblade knives. The Inspector simply seized the knife, broke off the blade and tossed the pieces into the trash can.

51. I have never heard of a case where anyone has been arrested for possession of 1/10 gram of marijuana. The amount is so small that testing it in a chemical test kit would destroy the sample. I'm not sure that any test kit would test such a small sample.

52. As a drug task force supervisor in El Paso, I have received numerous calls from USCS officers at the POEs asking me to accept cases which involved small amounts of controlled substances, particularly marijuana. Sometimes the amounts were ounces , sometimes even two or three pounds. I declined those cases on a regular basis. In view of the fact that the El Paso County DA refused to prosecute Mrs. Rasmusson for either the switchblade knife or the 1/10 gram of marijuana, I feel that the arrests made by the EPPD were made at the request of USCS, probably Agent Frost, and that they were made for harassment only. Since Agent Frost was notified of the search and detention of Mrs. Rasmusson and he responded quickly to interview her, it is obvious to me that he was the person who placed the L/O.

53. My opinions regarding the switchblade knife and the 1/10 gram of marijuana are consistent with the opinions expressed by retired USCS Supervisor /Agent Mark Ryden in his affidavit dated 3-3-97. [(See encl #21); see App. 1466].

54. There are several other incidents where passengers and crew members were strip searched, but it would be voluminous to detail all these other incidents. I believe that the above documented incidents are sufficient to establish a pattern of conduct aimed at the Rasmussons

and Rasmark.

55. From my experience working on the both the Canadian-U.S. and Mexico-U.S. Borders I know that "strip searches" are not conducted by USCS or USI&NS Inspectors unless there is some strong reason to do so. I.e. either a L/O or a very strong suspicion the individual is carrying drugs or contraband on their person.

56. My opinions on this subject are consistent with the expert opinion of Mark Ryden, a retired USCS Supervisor/Agent. [(See enclosure #21); see App. 1466].

57. The next portion of this affidavit will address Agent Frost's affidavit for search warrant signed on 11-19-93 [(See encl #22); see App. 912-947] and through which he obtained a federal search warrant for the Rasmusson residence at 11157 Leo Collins, El Paso, TX.

58. During the past several months I have reviewed hundreds of pages of USCS reports, DEA reports, EPPD reports as well as declarations and depositions of witnesses and several defendants in this case. I believe that Agent Frost's affidavit of 11-19-93 brings together in one document most of the critical law enforcement issues related to this civil suit.

59. On pg 2, para 4, encl 22 (see App. 912, para 8), of his affidavit, Agent Frost stated that "The portion of this investigation which related to Mark Rasmusson and Rasmark was predicated on facts which indicated that Mark and Debra Rasmusson had provided transportation of controlled substances, currency, and people in their aircraft in furtherance of the controlled substance conspiracy carried on by the Jesus Flores Organization."

60. The above statement is false and is not supported by any evidence. DEA Agent Tom Lenox who was a case agent in the Flores case testified in deposition that the DEA investigation failed to reveal any evidence that Mark Rasmusson was transporting drugs on any of his aircraft. [(See encl 23, pg 15, lines 23-25 and pg 16, lines 1-2); see App. 461].

61. It is noted that Agent Frost failed to contact either DEA Agents Lenox or Perkins during the USCS FTF investigation. Had Frost contacted either of the DEA Agents, they would have told him that they never considered Mark Rasmusson a "major player" in the Flores case. [(See encl 13); see App. 996].

62. On pg 5, para 2, Encl #22 (see App. 917, para 18), Agent Frost stated , "Mark and Debra Rasmusson and Jerry Burnett concluded that , "Flores was in the illegal drug business'. Burnett reportedly told Special Agent Perkins that during 1990 he (Burnett) had several conversations with the Rasmussons regarding Flores and "his people" being in the drug business and that both Mark and Debra Rasmusson told him, (Burnett) that they knew that Flores was in the drug business."

63. Agent Frost continues by stating that during the Flores trial, Mr. Burnett denied that he ,(Burnett)ever stated to Mark Rasmusson that Jesus Flores was involved in illegal activities. Burnett also denied that Mark Rasmusson ever remarked to him,(Burnett) that Jesus Flores was engaged in any illegal activity.

64. The fact that Agent Frost used the above information, knowing that Mr. Burnett had been misquoted by DEA Agent Perkins indicates that Agent Frost has little regard for the truth. The fact that Mr. Burnett was a government witness during the Flores-Rasmusson trial and his testimony was not disputed or impeached by the attorney for the government indicates to me that Mr. Burnett was, in fact, misquoted by DEA Agent Perkins.

65. Again, if Agent Frost had interviewed Agent Perkins at the outset of the USCS Rasmark investigation, Frost would have known the information Frost used from the DEA-6 reporting the interview of Mr. Burnett was false and misleading.

66. On pg 6 of encl 22 (see App. 918, para 21), Agent Frost stated that "During the course of this interview, a DEA interview with Albert Apodaca, a CPA handling Rasmark accounting matters, Mr. Apodaca and Mr. Jensen told SA Perkins that on the afternoon of 8-27-90 Mark Rasmusson came to the office of Apodaca and Jensen and

stated that he wished to amend his May, 1990 financial report to include an $11,000.00 cash transaction.

67. Mr. Apodaca stated in an affidavit dated 9-24-96 that he never made the above statement to Agent Perkins.[(See encl #24); see App. 335]. Mr. Apodaca stated that he told the agents that the money was from several cash transactions. Mr. Apodaca stated ,"Mr. Rasmusson did not ask me if he should match the invoices to the amounts the government agents knew about ",as indicated in the DEA-6.

68. Mr. Apodaca stated he did not tell the DEA agents that he was alarmed by Mark Rasmusson's actions. He told them that he was alarmed by the agents contacting him, Apodaca. Mr. Apodaca continues by stating that he told the agents that he had always known Mark Rasmusson to be very honest and was not aware of him, (Mr. Rasmusson) ever being involved in any illegal activity. This comment about the honesty of Mr. Rasmusson was never included in any of the DEA reports of the interview with Mr. Apodaca.

69. Agent Frost implies in his affidavit, Encl 22 (see App. 918, para 21), that Mr. Apodaca suspected that Mark Rasmusson was involved in tax violations. Mr. Apodaca clearly denies that allegation. Again, had Agent Frost bothered to talk to the DEA agents, he, Frost, would have known that he was using false and misleading information in a sworn affidavit.

70. Mr. Apodaca stated that he was never told by Mark Rasmusson that Rasmark did not accept cash. He also stated that it was his, Apodaca's, own attorney who told him to require a DEA subpoena before releasing any Rasmark records. Mr. Apodaca stated he was not shown a copy of the DEA-6 regarding his statements to Agent Perkins until just before the Flores-Rasmusson trial. When he read the statements, he told Agent Perkins that some of the information in the DEA-6 attributed to him, Apodaca, was false.

71. Agent Frost states on pg 7, para 5, encl 22 (see App. 920, paras 25,26), that an FBI source stated in a June, 1993 report that "Mark Rasmusson became involved in money laundering with Flores. The

same source further stated that Mark Rasmusson was buying aircraft parts with the proceeds of trafficking in controlled substances." Frost testified that he reviewed the documents in the Rasmusson's divorce case. Then Frost knew or should have known that between October 22, 1993 and the final divorce decree in June, 1996, the divorce court had a "special master" that controlled the cash flow of Rasmark Jet Charter, Inc., and no possibility of money laundering through the device of buying and selling aircraft parts was even remotely possible.

72. By November, 1993, the date of Agent Frost's affidavit, Agent Frost and the FTF had been investigating Mark Rasmusson and Rasmark for almost two years. Agent Frost had access to Mr. Rasmusson's personal and business IRS tax returns, personal banking records, and other financial records available through the federal grand jury. During my review of USCS and DEA reports and the declarations and depositions of many other witnesses in this case, there was no evidence developed to verify any of the above information used by Agent Frost.

73. Agent Frost was never able to show that Mr. Rasmusson was buying more aircraft parts than he actually needed for Rasmark. None of the information furnished by the FBI source in June, 1993 had been verified or corroborated by November, 1993, a period of several months. The use of this uncorroborated information appears to be another example of Agent Frost attempting to embellish and mislead the US Magistrate.

74. On pg 7, para 6, encl 22 (see App. 921, para 27), Agent Frost states that "He/she had personal knowledge that in the past Mark Rasmusson would travel throughout the U.S. in his aircraft and collect proceeds of trafficking in controlled substances and deliver the proceeds to the interior of the Republic of Mexico."

75. Again, this information was received in June, 1993 and as of November, 1993, none of the information had been corroborated in any way. During the several years when Mr. Rasmusson and Rasmark were under intense investigation by DEA, FBI, and USCS, no regular associations, either business or social, were ever documented between

Mr. Rasmusson and any known Mexican drug traffickers, other than his business relationship with Jesus Flores. It was never established that Mr. Rasmusson's relationship with Mr. Flores was anything other than legitimate.

76. Agent Frost had access to extensive USCS and FAA records relating to the frequency and destination of all Rasmark flights to Mexico and throughout the U.S. He should have known through these records that the information furnished by the FBI source was unreliable.

77. On pg 8, encl #22 (see App. 921, para 29), Agent Frost states that the FBI source stated , "Mark Rasmusson received approximately $500,000.00 in controlled substance proceeds from Jesus Flores during 1989-1990. The majority of the money received from Flores was used to purchase aircraft parts, aircraft engines, and pay expenses incurred during his, Mr. Rasmusson's, money laundering activities."

78. Agent Frost should have known that the IRS did a detailed audit of Rasmark for the years 1989-1990. There is a strong probability that the audit was requested by the FTF or the FBI based upon this allegation. The result of the IRS audit was a "no change", meaning that there were no violations of any sort. [(See encl #25); see App. 1290-91]. It would have been virtually impossible for a small business the size of Rasmusson's to hide $500,00.00 in aircraft parts expenses.

79. The DEA investigation of the Flores organization revealed only very limited contact between the Rasmussons and Mr. Flores. There was no reason why Mr. Flores would have given Mr. Rasmusson $500,000.00 to launder. The FBI informant information received in June, 1993, had not been validated through any investigative evidence when Agent Frost used it in his affidavit in November, 1993. Again, I believe that Agent Frost was deliberately including uncorroborated and misleading information in his affidavit.

80. On pg 8, para 4, encl #22 (see App. 922, para 31), Agent frost states that an FBI source, called FBI-1, advised that during

December, 1991, that he/she was in the Rasmusson residence at 11157 Leo Collins, El Paso, TX. FBI-1 allegedly saw a large suitcase in Deborah Rasmusson's bedroom. The suitcase contained what appeared to be controlled substance and currency. The testimony of FBI Agent Acosta indicates that the FBI took no immediate action to seize the alleged drugs or money. It is not known whether FBI-1 furnished the information to the FBI on a timely basis. It is known that the FBI was never able to corroborate the information.

81. Agent, Frost used the uncorroborated and "dated" information in his affidavit and failed to identify it as such. This appears to be another attempt by Agent Frost to embellish and mislead .

82. FBI-1 also stated that he/she saw storage boxes under Deborah Rasmusson's bed containing Rasmusson's business records. One of the boxes contained bank statements from banks in Colorado, Alaska, Cabo San Lucas, Mexico, New York, and the Cayman Islands. During the many months of the investigation conducted by the FTF, no extensive bank records were ever located which indicated that Mark Rasmusson had any major bank accounts outside the U.S. Mr. Rasmusson owned a resort home in Cabo San Lucas, Mexico. He maintained a small banking account there to pay bills related to the maintenance and upkeep of that residence.

83. The information regarding the actions of EPPD Officer George Salas contained on pg 9, encl 22 (see App. 923, paras 35-41), has been discussed earlier in this affidavit. Suffice to say that Officer Salas' actions were a discredit to himself, the EPPD, and to all professional law enforcement officers.

84. During the 5-23-93 interview with Deborah Rasmusson conducted by Agent Frost and other USCS agents at the USCS office, Agent Frost allowed another USCS agent to purchase a six pack of beer and furnish it to Mrs. Rasmusson while the interview was ongoing. Agent Frost told Mr. William Cole, a Nevada attorney for Mr. Rasmusson's ex-wife, that he , Frost , had seen Deborah Rasmusson, "high on drugs" while she was in Frost's office.[(See encl #12); see App. 1292]. Since Mrs. Rasmusson stated she was only in Frost's office

on one occasion, that being during the 5-23-93 interview, Agent Frost must have believed that Mrs. Rasmusson was "high on drugs" during that several hour interview. He added to that "high" by furnishing her a six pack of beer which she stated she consumed in the USCS office during the 4-5 hour interrogation.

85. On pg 9, para 6, encl #22 (see App. 923, para 38), Agent Frost states that "During several hours of conversation with Debra Rasmusson, she stated to me that Mark Rasmusson ships approximately 1,000 lbs. of U.S. currency out of the U.S. twice a week on behalf of his criminal associates. She further stated that this currency is transported by aircraft belonging to Rasmusson's Jet Charter, Inc.".

86. The above statement is ridiculous on it's face. That amount of currency ,2,000 lbs per week, would represent billions of dollars per month. Given that the information was received from a person whom Agent Frost himself described as "high on drugs' and someone who just drank a six pack of beer furnished by the USCS during a multi-hour interview, it is clear to me that Agent Frost has absolutely no regard for the truth and he considers a statement made under oath as something to be taken lightly.

87. The U.S. Magistrate should certainly have been advised that the above information was received from a person "high on drugs" and probably intoxicated. No qualification of any sort was placed on the information when Agent Frost used it in his affidavit.

88. During the 4 or 5 hour interrogation of Mrs. Rasmusson on 5-23-93, Agent Frost attempted to persuade her to sign a consent to search form and stated the Rasmark assets would be subject to forfeiture. This effort was made despite the fact Agent Frost himself described her as "high on drugs and knowing that she had consumed a six pack of beer during the interview.

89. Not only does Agent Frost's actions demonstrate a blatant disregard for his own agency's rules regarding providing liquor to witnesses being interviewed inside a government office, he has less

regard for the rights of a citizen. How could any consent to search form obtained under such conditions be valid unless all agent personnel involved lied during any subsequent inquiry and participated in a "cover-up". I believe that this has happened in this case.

90. Once Mrs. Rasmusson realized that USCS intended to seize all the assets of Rasmusson's, she refused to cooperate any further and she left the USCS office. When she arrived at the USCS office, Mrs. Rasmusson was in possession of a box of Rasmusson's business records. When she left the building carrying the box of records, Agent Frost and other USCS agents followed her to a nearby convenience store where Agent Frost seized the box of records as "evidence".

91. Agent Frost obtained a search warrant for the box on 5-26-92 and he opened the box and examined the contents on 5-27-92. The inventory of the box was witnessed by FBI Agent Acosta. Agent Frost states on pg 10, para 6, encl #22 (see App. 924, para 44), that "The contents of the box upon analysis indicated that the Rasmussons are engaged in tax evasion."

92. This statement made under oath by Agent Frost can only be described as a blatant lie. IRS Agent Fonda Hivick, a CPA and IRS tax expert, testified that she examined the contents of the box. She stated that the box contained normal business records and personal papers. She stated there was nothing in the box that led her, Hivick, to believe there was any prosecutive potential for Mark Rasmusson under IRS investigating authority. [(See encl #26, pgs 28-29); see App. 524].

93. Agent Frost testified that he had not been trained to review documents related to tax evasion. [(See encl #27, pg 18); see App. 371]. Prior to making the statement about the Rasmusson's involvement in tax evasion in his November 1993 affidavit, must have discussed the matter with IRS Agent Hivick, the most qualified person in the FTF to make such a determination.

94. There is not a shred of evidence to support the "tax evasion" statement made by Agent Frost. In his deposition of 1-10-97, Agent Frost attempts to defend his "tax evasion" statement by saying

"I'm going to have to explain to you, the way that paragraph reads is poor sen-tex on my part, poor writing on my part." [(See encl #28, pg 125, lines 21-23); see App. 458].

95. Agent Frost false statement is more than "poor writing on his part". He had been in possession of the records in the box from May, 1992 to November, 1993, ample time for anyone to review, analyze and carefully study the records. The fact is that there was never any evidence of any tax evasion or other violations of any sort in the box of records. During 1992 the 1989-1990 IRS tax audit of Rasmusson's was completed and Agent Frost had access to that information which was all favorable to Rasmusson's.

96. Also, it is worth noting that no tax violation of any sort was ever filed by the IRS against Mark Rasmusson, Deborah Rasmusson, Rasmusson's, or Andy Gantkessy as a result of any investigation conducted by the USCS FTF.

97. The deliberate use of false information in a sworn affidavit by Agent Frost borders on criminal perjury. It also seriously undermines Frost's credibility his version of the facts and matters disputed in this case.

98. On pg 10, last para, encl #22 (App. 925, para 45), Agent Frost states that USCS Mills submitted a written report on 9-16-92 that he, Mills, observed a red Mercedes 560SL bearing Arizona license HSR-995 arrive at the Rasmusson's office at about 12:15PM. Two Hispanic males "left the vehicle and entered the Rasmusson's business. In a short time the two individuals departed. Later investigation determined that the vehicle was owned by Hector Barrera, a suspected drug trafficker from Corona, Calif."

99. It was never determined that either of the individuals observed on 9-16-92 was Hector Barrera. Tests which Mr. Ed Wagner and I conducted at the building where the Rasmusson's office was located in Sept. 1992 revealed that a single entry door served three businesses, Rasmusson's, Julie's Flight Service, and an Aircraft Parts

Store. Once the entry door closes, it is not possible, without entering the building, to determine which of the three business a person visits.

100. Agent Mills also testified in deposition during January 1997 that he was in charge of the surveillance conducted on the Rasmark business on several occasions. When asked about a particular entry on the USCS report of surveillance, Agent Mills was unable to name the officer who actually made the observation. [(See encl #35); see App. 1065). He stated that the officers did not make individual logs to detail what each had observed. His surveillance report simply names the officers who were on duty on a given date and does not identify the individual officer making a specific observation.

101. It would be impossible for most of this information to ever become testimony since the observations are not properly documented. Another example of unprofessional, sloppy investigation.

102. On pg 12, para 1, encl #22 (see App. 926, para 52), Agent Frost states that USCS Agent Schroeder and USCS Auditor Hector Barrera interviewed Arturo Vargas, the Rasmusson's former accountant. Agent Frost states that "Mr. Vargas stated that he found out that Rasmark Jet Charter, Inc. was making out double invoices, with the amounts on the invoices or the descriptions of the cargo carried slightly altered. In some cases the number of the invoice was the same, however, the amount due Rasmark Jet Charter, Inc or the description of the cargo was changed."

103. Mr. Vargas also allegedly stated that after leaving Rasmark, he worked for Apodaca and Jensen. Albert Apodaca told Mr. Vargas that "Deborah Rasmusson admitted not paying on $100,000.00 in income in 1990 or 1991." In Albert Apodaca's affidavit of 9-24-96 Mr. Apodaca denies ever making such a statement to Mr. Vargas and further denies ever hearing such a statement made by Mrs. Rasmusson.[(See encl #24); see App. 335].

104. In Mr. Vargas' affidavit of 2-3-97,[(See encl #29); see App. 360], Mr. Vargas denies that he ever told Agents Schroeder and

Barrera that Rasmusson's were "double billing." He stated that he told them that "in some instances, if a customer or Rasmusson's lost an invoice, a new invoice was prepared to replace it. The second invoice would be identical to the lost invoice. The dollar amount and cargo would not be altered."

105. Mr. Vargas also did not recall making any statement to the agents that Albert Apodaca told him that Deborah Rasmusson told Apodaca that she failed to pay taxes on $100,000.00 of income in 1990 or 1991.

106. The above is another instance of "creative writing" by USCS and members of the FTF. In few, if any, of the instances where statements were taken from potential witnesses were the persons interviewed ever allowed to review their statements for accuracy. It is noted that many of the witness statements were flawed.

107. On pg 11, encl #22 (see App. 925), paras 47-50, Agent Frost relates details of the search and arrest of Deborah Rasmusson and Blanca Avelar at the Ysleta POE on 11-10-92. This incident has been discussed in detail earlier in this affidavit. The information as regarding the search and arrest of Deborah Rasmusson and Blanca Avelar by Agent Frost has little or no bearing on his request for search warrant. None of the information related by Agent Frost ever resulted in the development of any significant evidence of any criminal violation of which I am aware.

108. On pg 12, encl #22 (see App. 928, paras 57-62), Agent Frost relates information obtained from EPPD Officer Clifford Gongaware on 3-1-93. On 7-13-92 Officer Gongaware was on duty at the El Paso Airport. Sometime after midnight he observed a truck with a Chihuahua license enter the Rasmusson's loading area, inside the airport fence. The truck was unloaded and it's cargo loaded onto a Rasmark plane. Officer Gongaware had been told by the driver of the truck that the cargo was auto seat belts. While the plane was being loaded, Gongaware noticed that two men stood near the plane, one facing North and one facing South.

109. Although Agent Frost makes the above activities seem unusual and suspicious, they were in fact very normal. Ford employee, Beverly Enriquez and former Ford employee, Andy Gantkessy, have stated that they often loaded Rasmusson's planes between midnight and 3:00AM. The charters normally had to make deliveries to the assembly plants by 5:00 AM. Seat belts was a cargo often delivered from the Juarez Ford warehouse. The two suspicious males standing near the plane were probably the pilot and co-pilot waiting to enter the plane once it was loaded. It is also noted that the event was witnessed in July, 1992, and was not reported or used until March, 1993.

110. A second similar incident was used by Agent Frost on pg 13, encl #22 (see App. 929, paras 63-65). He states that in July, 1992, EPPD Officer Andrew DeAngelo was working a night shift at the airport. Officer DeAngelo observed two men with rifles standing beside a Rasmark plane while it was being loaded with cargo. The officer told his supervisor who told him to stay clear of the area since Rasmark was under investigation.

111. Again, Agent Frost implies that this information indicates that Rasmark was engaged in some illegal activity. The "dated" information was several months old and was never corroborated. If the officer actually saw two men with rifles, both he and his supervisor failed to take proper action. The area in question is within the airport security fence. The search of the Rasmark business by FTF agents failed to reveal any rifles. The trucks from Juarez making deliveries to Rasmark are inspected at the border and the drivers would certainly not carry rifles in their trucks. There is no credible evidence whatsoever to corroborate the information obtained from officer DeAngelo. This is another example of Agent Frost doing "creative writing".

112. Officer DeAngelo observed what he believes are two men inside the security fence of the El Paso International Airport armed with rifles. He reports this observation to his supervisor who orders Officer DeAngelo to disregard and take no action because Rasmark is under investigation by the feds. This is an obvious false statement either by Frost or by DeAngelo or both conspiring together to bolster and support Frost's effort to deceive the magistrate into finding probable cause

where none exists. Men with rifles inside the airport security fence could reasonably be intent on carrying out a hijacking of an aircraft or some terrorist activity. No officer or supervisor would permit unknown persons carrying rifles inside airport security fence to go about their unknown business unchallenged or unidentified where the safety of hundreds of persons could be in question.

113. Page 14, encl #22 (seeApp. 929, paras 67-77), deals with the Gail Beach interview stated in her deposition of 1-31-97,(See App. 902), that she told Agent Frost that much of the information she provided to him was rumor and hearsay. Agent Frost used the information from Beach without any regard for it's accuracy. Another attempt to mislead the U.S. Magistrate.

114. It is further noted that in Beach's answers to admissions Mrs. Beach denied that she told Agent Frost that "the Rasmussons were engaged in a "kick-back "scheme with Joe Sudomir and Andy Gantkessy." [(See encl 32); see App. 1048]. This is another example where a FTF agent misquotes a witness, does not allow the witness to review the contents of their statement, then uses the false or misleading information in a sworn affidavit. Agent Frost uses the statement which Mrs. Beach has disavowed on pg 14, para 68 of encl #22 (see App. 929]. Agent Frost seems to be guilty of this tactic more that any other member of the FTF.

115. Agent Frost also uses similar information obtained from Chris Hines, a former Rasmark employee who was fired. [(See pg 15, encl #22); see App. 929, paras 78-81]. Little or none of the information furnished by Hines was ever corroborated. In Mr. Hines Answers to Admissions propounded by Plaintiffs[(See encl #34); see App. 1060) Hines makes the following denials.

116. He denied that he told Agent Schroeder and Detective Holland that he heard Debrah Rasmusson state that "the money was for a person who had given them a lot of business."

117. He denied that he told Agent Schroeder and Detective Holland that "Debra Rasmusson went on to state that she owed Andy

Gantkessy some money, but could not put his name on the check."

118. He denied that he told Agent Schroeder and Detective Holland that "Rasmark was billing Ford for flights that did not occur."

119. He denied that he told Agent Schroeder and Detective Holland that "The account is in the name of Mark and Debbie Rasmusson, 6825 Convair, El Paso International Airport, El Paso, Texas."

120. Misquoting Mr. Hines and not allowing him to review the content of his statement is another example of "sloppy and irresponsible" police work.

REGARDING THE TRASH PICK UPS AT THE RASMUSSSON RESIDENCE, 11157 LEO COLLINS:

121. Agent Frost discusses the trash pick ups on pages 16-18, encl #22 (see App. 933, paras 82-86). Blanca Vasquez, the Director of the El Paso Sanitation Department advised me that her agency will only allow a trash pick up by a law enforcement agency. The agency must submit a letter to the Sanitation Dept. If the request is approved, a route supervisor is instructed to contact the requesting agency and arrange details of the pick up. The law enforcement officers are never allowed to enter the property where the trash is being picked up. The request letters are only maintained on file for two years and then destroyed.

122. Testimony offered by members of the FTF indicates that a request letter was probably submitted. Both EPPD Detective Holland and EPSO Detective Baker testified that they received trash from the Rasmusson residence through a Sanitation Dept. worker a few blocks away from the residence. However the Sanitation Dept. worker was not identified and therefore the chain of custody of any evidence found in the trash would be incomplete.

123. It is noted that both Deborah and Mark Rasmusson stated that items allegedly found in their trash were never discarded by either of them. FTF officers deny ever entering upon the Rasmusson property

to pick up trash.

124. Agents Frost and Schroeder testified in their January, 1997, depositions that trace amounts of narcotics were found in the Rasmusson trash. [(See encl #31); see App. 1090]. It is not possible to determine from Det. Keith's report whether he picked up the trash from the residence or from a Sanitation Dept. worker in the neighborhood. Keith states that a plastic bottle top found in the Rasmusson trash was tested by Agent Schroeder with a chemical field test kit and tested positive for cocaine. A silver spoon with black residue tested positive for heroin.

125. It is noted that if Det. Keith removed the items directly from the Rasmusson trash, he entered the property illegally and made an unlawful search. If the items were recovered from a Sanitation Dept. employee ,and that employee was not identified , there is no complete chain of custody for the evidence back to the Rasmusson residence. Detective Baker stated that he did not note the names of the Sanitation Dept. workers from whom he obtained trash and Detective Keith does not include any such names in his report.

126. It is also noted that none of the FTF Agents interviewed during the January, 1997, depositions indicated that any fingerprint examinations or other lab examinations were ever made of the items which allegedly contained trace amounts of cocaine and heroin. Mr. Rasmusson stated that there was a major remodeling job going on at the Rasmusson residence during much of the time period covered by the trash pick-up. Construction workers and numerous other individuals had access to the house and may have thrown the questioned items in the trash.

127. Again, it was sloppy police work on the part of the FTF agents not to preserve the items containing the trace amounts of narcotics. These items should have been handled in accordance with accepted evidence handling methods but that was not done.

128. On pgs 14-15, encl #22 (see App. 930, paras 72-77), Agent Frost related information he stated that he obtained telephonically

from Steve Thorn of Taos, NM. The information relates to a conversation Thorn allegedly had with Donald M. Joseph, a former Rasmark employee. Mr. Thorn thought that Mr. Joseph's name was "Johnson". Thorn stated that "Johnson" told him that he, "Johnson" and Mark Rasmusson were flying controlled substances and drug money, "all over the place" and that the DEA is aware of their activities but can't catch them."

129. Donald Joseph responded to the allegations made by Thorn in an affidavit dated 7-15-96.[(See encl #33); see App. 353]. Mr. Joseph makes a detailed denial of all the allegations made by Mr. Thorn to Agent Frost. Mr. Joseph also stated that both he, Joseph, and Thorn were intoxicated at the time the conversation took place.

130. Agent Frost never indicates that he made any effort to verify any of the information he received from Mr. Thorn. It was what he, Agent Frost, wanted to hear so he simply used the information without any regard for it's validity.

131. The information on pg 19, encl #22 (see App. 936), paras 95-100, relating to the Andy Gantkessy interviews has been discussed at length earlier in this affidavit and will not be readdressed. The information furnished by Mr. Gantkessy, obviously under extreme duress, is of questionable validity. It is noted that no significant evidence was ever developed as a result of the information related by Agent Frost on pg 19 (see App. 936).

132. On pg 24, encl #22 (see App. 943, paras 115-19), Agent Frost alludes to the fact that Mark Rasmusson was living beyond his means. He implies that Mr. Rasmusson had some other source of income. Had Agent Frost reviewed the business records of Rasmark, as he should have done, he would have known that Rasmark was a thriving air charter business before losing it's business with Ford Motor Company. At one point Ford owed Rasmark about 1.5 million dollars for back invoices. That figure certainly represents more than " one flight per day", as estimated by Agent Frost.

133. ON [sic] pg 25, encl #22 (see App. 945, para 123), Agent

Frost alludes to "double invoices" submitted to Ford by Rasmark. All investigation conducted by the FTF, internal audits conducted by Ford, interviews with Ford employees, and an extensive review of Rasmark business records, and an IRS audit failed to reveal a single documented case of "double billing" to Ford by Rasmark. Beverly Enriquez, a Ford El Paso employee, stated in her affidavit that Ford uses an accounting system which makes it virtually impossible for "double billing" to get through the system.

134. Agent Frost alleges in para 126, encl #22 (see App. 946, para 126), that Ford somehow was defrauded by Rasmark and that the Ford checks to Rasmark were sent through the U.S. Mail, constituting a federal violation. This simply didn't happen and there was never any evidence to corroborate the allegation made by Agent Frost.

135. On his January, 1997 deposition Agent Frost was unable to relate a single instance of "mail fraud" which was corroborated through his review of Ford records.

136. In summary, Agent Frost's affidavit, encl #22 (see App. 912-947), is riddled with false, misleading, inaccurate, unverified information. I believe that Agent Frost was aware of this fact and he intentionally used the information to mislead the magistrate into finding probable cause where none existed. If Frost had probable cause, there would be no need for him to lie or mislead the magistrate in order to obtain the search warrant. The fact that he still refuses to acknowledge the fact that the majority of the information is false, unreliable or misleading convinces me that the credibility factor for Agent Frost is "near zero".

THE SUPERVISION ISSUE

137. The fact that Agent Frost was allowed to repeatedly lie and distort the truth in written reports and at times under oath in affidavits is a strong indication that his supervisors either condoned and encouraged Frosts illegal actions or acquiesced in what he was doing.

138. Supervisor Wilczewski read Agent Frost's reports and

attended regular briefings conducted at the FTF. Certainly Mr. Wilczewski has most of the supervisory responsibility for Agent Frost's irresponsible, illegal actions. If there was a "cover up" of any sort, Mr. Wilczewski must have been involved. He obviously knew about the release of investigative case information to Ford by Agents Frost and Schroeder, the "beer incident" at the USCS office during the 5-23-92 interview of Mrs. Rasmusson, the extended, unwarranted , and the punitive use of L/Os maintained for months at a time resulted in outrageous strip searches of Rasmark pilots, crew members and passengers. Mr. Wilczewski did nothing to control Agent Frost's overzealous activities. There is no indication that any action was taken to discipline Agent Frost after the 5-23-92 "beer incident". Wilczewski testified in his deposition [(pg.54, not enclosed as an exhibit); see App. 810] that he assisted Frost in preparing Frost's November 19, 1993, search warrant Affidavits.

139. ASAC Donnie Reay and SAC Michael Lappe must also have known, or at least should have known, what was happening at the FTF. The fact that SAC Lappe signed the unwarranted, vindictive, "poison pen" letter to Ford indicates to me that he supported the actions of Agent Frost, who drafted the letter.

140. The letter to Ford was clearly punitive in nature and served no investigative purpose whatsoever. ASAC Reay should have raised an objection to sending the Ford letter. His failure to do so indicates his support for the actions of Agent Frost.

141. Likewise, ASAC Reay knew about the "beer incident" and apparently took no action to discipline Agent Frost for what must have been a clear violation of USCS policy. Such conduct would certainly violate the policies of all reputable law enforcement agencies with whom I have ever been associated.

142. The other FTF officers from the EPPD and EPSO assigned to the FTF were drawn into Agent Frost's unwarranted and illegal activities. It is accepted procedure that when state and local police officers participate in a multi-agency task force, the supervision of that task force is most often provided by one of the federal agencies. In this

case that agency was USCS. The EPPD and EPSO officers had little choice but to comply with the orders given by the USCS Agents, usually Agents Frost and Schroeder.

143. The conduct and character of Agent Frost seem to be at the very heart of this case. He was the motivating force behind most of the extremt actions at issue in the case. He seemed determined to destroy Mark Rasmusson and Rasmark by any means. Many of the actions taken against Rasmark were on their face clearly punitive. The Ford letter, the extended L/Os and unwarranted strip searches, the use of false and misleading information in official reports, and the seizure of a vehicle from Mrs. Rasmusson over 1/10 gram of marijuana. (This seizure was dropped but the Rasmussons spent about $2,500.00 in legal fees and over $3,500 for a bond during the process).

144. The action taken by Agent Frost which most clearly indicates his intent to "punish" Mr. Rasmusson and Rasmark relates to the seizure of aircraft maintenance records during the November 1993 search of the Rasmark business. All the Rasmark aircraft maintenance records were seized. These included pilot log books, engine logs, and in general all the FAA records required by law to operate a commercial charter service.[(See encl #36); see App. 365].

145. Mr. Vaughn stated that without the FAA required records Rasmark was forced to cease operation for an extended period. Agent Frost never indicated that the records were ever used for any investigative purpose. Rasmark spent thousands of dollars attempting to recreate engine logs and other records so that the company could resume operations. Despite repeated pleas made to Agent Frost by Mr. Vaughn and even FAA, Agent Frost held on to the records.

146. Agent Frost even used the records as "bait" to arrange meetings with Mr. Vaughn where repeated efforts were made by Agent Frost to persuade Mr. Vaughn to become an informant for the FTF. When a court order was finally obtained, Agent Frost reluctantly released the records in June 1994, about seven months from the time they were seized.

147. It is also noted that Mr. Vaughn stated that the records were returned in a state of "disarray" and not all the records were returned. A critical engine log book was never returned.

148. The above actions by Agent Frost indicate to me that he has a total disregard for the rights of U.S. citizens and feels that he is "above the law". If there is still justice in our country, Agent Frost and his associates who committed the outrageous acts in this case will be held accountable for their actions. It is obvious that the USCS does not intend to reprimand him or to assure that his unacceptable conduct ceases.

/s/ Henry A. Webb
Signature of Affiant

State of Texas
County of El Paso

Henry A. Webb, personally appeared before me, and being duly sworn, declared that he signed this affidavit, and further stated that he read the affidavit and the statements contained therein are true.

Sworn to and subscribed before me this 3rd day of April 1997.

/s/ Dolores Diaz Olague
Notary Public
My commission expires 5/5/99.

Affidavit of Henry A. Webb
MARCH 18, 1997

[Paragraph numbers added to text.]

1. My name is Henry A. Webb. I am a citizen of the United States. I have resided in Canutillo, Texas since January 1978. I have the following experience in the law enforcement field. I graduated from the University of California-Berkeley in 1960 with a major in Police Administration. From June 1960 to May 1962 I was a Border Patrol Agent for the USI&NS. When I left the Border Patrol in May 1962 to enter the Federal Bureau of Investigation, I was serving as Sector Training Officer for the Chula Vista Border Patrol Sector.

2. I entered the FBI as a Special Agent in May 1962 where I served until my retirement in August 1985. During my tenure in the FBI, I had the following assignments: General investigative felony case investigations on several Indian Reservations in New Mexico and Montana. Seven years handling law enforcement liaison with Mexican Police Agencies in Baja California, Mexico. Seven years assigned to the Great Falls, Montana Resident Agency, a 12 county area which included two Indian Reservations. During three or four of those years I was the senior resident agent responsible for three or four other agents. I also handled liaison with law enforcement agencies in two Canadian Provinces.

3. From 1979 to 1985 I was assigned to a long term FBI undercover project based in El Paso. I did most of the undercover work which included meeting and negotiating with criminals, buying stolen heavy equipment, stolen vehicles, and narcotics.

4. From August 1988 to March 1990, I was employed by the West Texas Multi-County Narcotics Task Force as an investigator and Supervisor. From Dec 1988 to March 1990, I was the Assistant Project Director for the Task Force. My duties included supervising about 15 to 20 narcotics investigators and one other supervisor.

5. From July 1990 to July 1995 I was employed by the Texas

Criminal Justice Department as the Texas State Representative to Operation Alliance, the Southwest Border Narcotics Coordination Center. My duties included assisting in drafting multi-agency drug initiatives, locating new resources, and screening and coordinating requests for military assistance from state and local law enforcement agencies through out Texas.

6. In addition to my many years of investigative training and experience, I have also received extensive training as a law enforcement instructor. From 1964 and throughout my FBI career I was an FBI firearms expert and general police instructor. I have conducted hundreds of hours of instruction to FBI agents and to law enforcement officers in California, Montana, Idaho, Canada, and Texas. For four years, I conducted classes for officers and supervisors at the Annual Texas Narcotics Control Program training seminar, a statewide meeting attended by about 600 to 700 officers. I have lectured on officer integrity, officer misconduct, suspect and witness interviews, report writing, informant development and supervision, undercover operations, evidence collection, crime scene investigations, tactical arrest situations, reasonable use of force and several other subjects.

7. During my tenure as an FBI Special Agent I received regular training on legal issues related to interviews of witnesses, interrogations of suspects, and arrests and detentions of suspects. I have testified before federal Grand Juries on many, many occasions and have testified in both federal and state court many times.

8. The purpose of this affidavit is to offer expert witness testimony in the civil suit filed by Mark B. Rasmusson, et al vs. Lawrence E. Frost el al. I was hired in my expert capacity by Attorney Sandra Sheppard, attorney for Mr. Rasmusson in early August 1996. Since that time I have read hundreds of pages of trial testimony, and investigative reports from USCS, DEA and other federal agencies as well as El Paso Police Department reports. I have also read numerous declarations made by members of the USCS Financial Task Force and I personally witnessed the depositions taken from Agent Frost and other members of the USCS Financial Task Force during January 1997. 1 have reviewed written reports of interviews and other handwritten

material obtained from Ford Motor Co. Security Officers relating to their contacts with Agent Frost and other USCS officers as well as their contacts with witnesses in this case. I have conducted numerous interviews of witnesses and have prepared several affidavits which were sworn to and signed by witnesses.

9. Based upon several months of reviewing extensive documentation, conducting live interviews, reviewing investigative reports, declarations, and affidavits made by witnesses on both sides of this case, I feel that I am qualified to make expert witness observations regarding the conduct and activities of Agent Frost and the other individuals named in this civil action. My observations and opinions are based upon my extensive experience , approximately 32 years law enforcement experience as an investigator, instructor, and supervisor, both at the federal level and at the state and local level.

10. The scope of this affidavit will be limited to the issue of disclosure of investigative case information on the part of Agent Larry Frost, Agent Fred Schroeder, and SAC Michael Lappe.

11. On June 2, 1993 Andy Gantkessy, a Ford-Favesa employee was interviewed by Agent Frost, several other federal agents, and an officer from the El Paso Police Department. The interview was conducted without notice and testimony from FBI Agent Acosta and Police Officer Holland indicates that Mr. Gantkessy had been under surveillance for at least two days by members of the USCS Financial Task Force. Mr. Gantkessy, a heart patient who had previously suffered a stroke, claims that he was threatened with arrest if he refused to talk to the agents. The agents stated that they never intended to arrest Mr. Gantkessy so they had no obligation to advise him of his rights or to tell him that he did not have to answer their questions.

12. Under extreme duress, Mr. Gantkessy finally told the agents that he would admit to "anything they said". He allegedly admitted to receiving cash payments and free air transportation from Deborah Rasmusson in return for booking Ford freight flights through Rasmark Jet Charter, Inc. FBI Agent Acosta stated under oath that the interview with Mr. Gantkessy lasted between 30 and 45 minutes. The

report of this 30 to 45 minute interview with Mr. Gantkessy was written up by USCS Agent Fred Schroeder in only six lines. [(See page 2, enclosure #1); see App. 1093-1097]. No mention is made of the fact that Mr. Gantkessy was "pressured" to become a confidential source of information, (an informant) for the USCS Financial Task Force.

13. FBI Agent Acosta testified under oath that Mr. Gantkessy agreed to "cooperate" with the Task Force. Agents Frost and Schroeder deny that Mr. Gantkessy was even asked to cooperate. Agent Acosta stated that he prepared his own, FBI memo, which reported the results of the Gantkessy interview to Agent Acosta's FBI Supervisor. Although this FBI report has not been made available to Mr. Rasmussons attorney, it should resolve the conflicting testimonies between Agents, Frost, Schroeder, and Acosta regarding the purpose of the interview with Mr. Gantkessy. Agent Acosta stated he never saw a copy of Agent Schroeder's report of interview with Mr. Gantkessy.

14. According to FBI Agent Acosta, Mr. Gantkessy was contacted after the 6-2-93 interview and requested to come to the USCS office for a second interview which was conducted on 6-3-93. The purpose of the second interview was to "clear up some points not resolved in the first interview." The 6-3-93 interview was conducted by USCS Agent Schroeder and Agent Acosta. Mr. Gantkessy has stated under oath that more threats were made against him during the second interview and that he was asked to "wear a wire" and record conversations with Mark Rasmusson. He alleges that Agent Schroeder asked him to make a call to Mark Rasmusson from the USCS office and that Agent Schroeder even told him, that he, Schroeder would tell him what to say.

15. Again, as in the first interview, the results of the interview were recorded and reported by Agent Schroeder. As in the first interview, there is a direct conflict between the accounts of Agents Schroeder and Acosta. Agent Acosta states, Pg 58 of his [January] 1997 deposition, (Enclosure #2); See App. 693]: "We asked him(Gantkessy) if he wanted to provide information but we didn't approach him as a source. We asked him if he wanted to cooperate if there is anything he can do to help us, we would appreciate it." Agent Acosta's testimony

clearly indicates that the purpose of the interviews with Mr. Gantkessy was to secure his "cooperation" as an informant against Mark and Deborah Rasmusson.

16. As in the first interview, Agent Acosta stated that he prepared a summary of the 6-3-93 interview with Mr. Gantkessy for his FBI Supervisor. The report of interview prepared by Agent Schroeder makes no mention of any attempts to persuade Mr. Gantkessy to "cooperate"with the USCS Task Force. It is noted that Agent Schroeder even told a Ford official in a Sept. 24, 1993 interview at El Paso, [(See enclosure #3); see App. 1305], that Mr. Gantkessy requested the June 3, 1993 interview with Agents Schroeder and Acosta. Agent Schroeder's statement is in direct conflict with the testimony of Agent Acosta who stated that either Acosta or Schroeder called Mr. Gantkessy and asked him to come to the USCS office for the interview. The FBI memo prepared by Agent Acosta should aid in resolving this conflicting testimony.

17. It is also noted that during the depositions of both Agents Frost and Schroeder, both admit to having met with officials from Ford and discussing investigative case information from the Rasmark case with them. Neither Agent Frost or Schroeder admitted to preparing any written reports of their meetings with Ford officials at El Paso. It has not been determined whether either Agent Frost or Schroeder documented the meetings which were documented by Ford.

18. It is also worth noting that most, if not all, of the information passed to Ford by Agents Frost and Schroeder relates to alleged violations by Mr. Gantkessy of Ford Company policy, and not violations of any federal statutes. These violations include accepting free air transportation, gifts, and in some cases cash from Deborah Rasmusson. No criminal violation was ever established which was acceptable to either the Federal AUSA or the El Paso County District Attorney. There simply was not sufficient proof that Mr. Gantkessy was violating anything other than Ford Company policy.

19. During the two interviews which Agents of the Task Force conducted with Mr. Gantkessy, he, Mr. Gantkessy, alleges that he

was repeatedly told that if he refused to "cooperate" the Agents would furnish to Ford the details of the admissions which Mr. Gantkessy made regarding accepting gifts, cash, and free air transportation. Mr. Gantkessy contacted two El Paso lawyers, Mr. Tony Silva and Mr. Bernard Pinetta [sic] and told them of the requests that had been made of him by the task Force Agents. Both attorneys advised Mr. Gantkessy to refuse to cooperate with the agents.

20. When Mr. Gantkessy relayed his decision to Agent Schroeder, Agent Schroeder allegedly stated that the task force would start "playing hardball". Actually there had already some action taken by the USCS task Force to jeopardize Mr. Gantkessys job. On January 28, 1993 an FBI administrative subpoena was served on Ford World Headquarters in Michigan. The subpoena ordered Ford to deliver to the FBI, "any and all shipping records pertaining to shipments of Ford Motor Company goods by Rasmark Jet Charter, Inc. Of El Paso, Texas for the years 1990, 1991, and 1992." [(See enclosure #4); see App. 1297].

21. All the records which were requested through the above subpoena could have been obtained by serving the same subpoena on the Ford office in El Paso. There was never any attempt on the part of any members of the Task Force to obtain any information about Rasmark from the El Paso Ford office.

22. As in the case of the conflicting statements regarding the interviews of Mr. Gantkessy, there are serious conflicts between the testimony of Agents Frost and Acosta regarding Fords compliance with the FBI subpoena. Agent Acosta testified that Ford complied promptly with the subpoena and furnished all the records requested within two or three months. This would mean that all the records would have been received by the FBI no later than April 1993. Agent Acosta stated that no one from Ford contacted the FBI regarding having any problem in complying with the subpoena.

23. Agent Acosta stated that when he, Agent Acosta, received the Ford records, he made copies of all the material and furnished same to Agent Frost and the USCS Task Force. Agent Acosta made a cursory

review of the records but neither he nor any other FBI Agent did any analysis of the records. Agent Acosta stated that the purpose of the subpoena was to 'get an idea of the amount of money being generated between Rasmark and Ford'. [(See enclosure #5, Pg 90); see App. 717]. Agent Acosta was not aware that USCS SAC Michael Lappe sent a letter to Ford dated 7-26-93 wherein extensive investigative case information related to the activities of Mr. Gantkessy, Deborah Rasmusson and Rasmark was revealed to Ford. [(See enclosure #6); see App. 1299].

24. Agent Frost has testified that the purpose of the letter to Ford was to "obtain the assistance of Ford Motor Company in providing us with the information in their files regarding the Rasmussons and Rasmark Jet Charter." [(See enclosure #7, pg 85, lines 3-8); see App. 432, lines 2-8]. Agent Frost further states "Due to the fact that Ford Motor Co. had already performed an extensive investigation of these allegations, had a file on it which we wished to review. Additionally, they had had other information requested from them. And they were needing guidance as to what it is that we needed within their accounting systems."

25. Agent Acosta again directly contradicts Agent Frost. According to Agent Acosta, Ford had no trouble at all complying with the FBI subpoena. All the records requested in the subpoena had been received by the FBI by April 1993, about three months before the USCS "disclosure letter". Agent Frost further casts doubt on the real intent of the letter by his denial that he even reviewed the Ford records, copies of which were furnished to him by the FBI.[(See enclosure #8, pg 90); see App. 440]. He stated that no one from the USCS performed any document analysis of the Ford records, denies that he ever asked for a copy of the Ford records obtained by the FBI, and finally stated that he did not believe in using records seized through administrative subpoenas in financial cases."[(See enclosure #9, pgs 91,92); see App. 441].

26. It appears obvious from the contents of SAC Lappe's letter to Ford that the intent is to influence Ford to fire Mr. Gantkessy and to terminate the business relationship with Rasmark. The letter contains information which is utterly false and which is not related in

any way to any federal criminal violation. One ridiculous statement in the letter states Mr. Gantkessy stated that, "Deborah Rasmusson offered him $5,000.00 per Ford charter which Gantkassy dispatched through Rasmark". Ford employees at El Paso who were responsible for the accounting records and invoices submitted by Rasmark have testified both to Ford officials and through affidavits that the average Rasmark-Ford charter cost between $2,000.00 and $3,000.00 per flight. The amount of the alleged 'kickback' is ridiculous on its face.

27. The information which SAC Lappe requests from Ford had already been furnished to the FBI about three months prior to the date of the Lappe letter. In addition to the disclosures made in the July 1993 Lappe letter, additional disclosures were also made to Ford officials by Agents Frost and Schroeder.

28. Enclosure #3 (see App. 1305), a Ford memo documenting a meeting at El Paso between Agent Fred Schroeder and a Ford official. The following statement is typed in bold print capital letters at the bottom of the memo.

> "THESE AGENTS REMINDED US OF ONE VERY IMPORTANT ISSUE. GANTKESSY CAN NOT TAKE THE STAND AND TESTIFY ON ANY OF THESE ISSUES IF HE WERE TO BRING A LAWSUIT AT FORD, BECAUSE ITS A CRIMINAL OFFENSE TO LIE TO FEDERAL AGENTS. IF THE ISSUE GOES TO COURT HE WILL END UP BEING PROSECUTED FOR FALSIFYING INFORMATION TO THE FEDERAL AUTHORITIES. THEY ARE STILL COOPERATING AND WILLING TO TESTIFY TO GANTKESSYS PARTICIPATION IN ACTIVITIES OF RASMARK."

29. The above statement clearly indicates that USCS and members of the Task Force intended to assure Ford that Mr. Gantkessy could never defend himself against any civil action involving Ford. The contents of the above Ford memo also demonstrates that USCS was receiving unlimited "cooperation" from Ford and did not need to send

any letter of explanation to convince Ford to cooperate.

30. A second Ford memo, [(See enclosure 10); see App. 1304], describes a meeting at El Paso between Agent Frost, Jim Pomaville, a Ford Personnel officer, and Phil Asiala, a Ford Security officer. The memo states, "Mr. Frost indicated that Gantkessy was deeply involved with the Rasmussons and Rasmark Charters, and described pertinent testimony that implicates Gantkessy in accepting money, air transportation, and other forms of kickbacks from Rasmark. He further explained that there are 11 full time federal agents from other departments within the federal government that are assigned on a full time basis to investigating this case. Their investigation centers around drug trafficking over the border from Mexico to the United States. He indicated that he could not discuss the investigation, nor could he reveal any other details, however, he assured us that Mr. Gantkessy has become a part of the investigation."

31. The memo closes by stating: "Based upon the advise from federal lawyers, they can and will testify as to their knowledge of Gantkessy's activities while employed by Ford Motor Co. Although they do not want to jeopardize their ongoing investigation in criminal activities involving Rasmark, he assured us that if requested, they could legally answer questions regarding Gantkessys activities and testimony during their investigation."

32. Another, and the final disclosure which will be addressed in this affidavit involves Mark Rasmussons ex-wife, Lori Nelson, who lives in Nevada. Agent Frost states that he contacted Lori Nelson in June 1992 to "gain information". [(See enclosure #11, pgs 92-93); see App. 444]. Agent Frost told Ms. Nelson that "I was conducting an investigation." He also told her that he had seen Deborah Rasmusson under the influence of controlled substances.

33. Agent Frost shortly thereafter made additional unauthorized disclosures to Mr. William Cole, attorney for Ms. Nelson. [(See enclosure #12); see App. 1292]. Mr. Cole states under oath that Agent Frost told him that there was an ongoing investigation by federal authorities concerning alleged criminal activities relating to criminal

charges which had been previously dismissed against Mark Rasmusson. Quoting Mr. Cole, "Mr. Frost stated that the charges had been dismissed during trial because a witness failed to appear and testify." Agent Frost also furnished Mr. Cole derogatory information of a personal nature regarding Deborah Rasmusson.

34. There clearly was no investigative purpose in Agent Frost furnishing the information to either Ms. Nelson or Mr. Cole. There is no information either from DEA or any other agency to support Agent Frosts missing witness statement.

35. A careful review of all the information which was furnished to Ford during the personal meetings between Agents Frost and Schroeder and Ford officials and through the July 1993 letter from SAC Lappe indicates the following. Most of the information has since proven to be false. Agents Frost and Schroeder knew or should have known at the time that the information was false. Gail Beach told Agent Frost that most of the information which she furnished to him was based upon "rumor and hearsay".

36. Agent Ford [sic] told Ford officials on 8-18-93 that the USCS investigation centered around drug trafficking over the border from Mexico to the United States. There was never any such indication either in the 1990 DEA investigation in which Mr. Rasmusson was acquitted or in any subsequent investigation. There simply never was any information to verify the statement made by Agent Frost. Agent Frost also stated to Ford that there were 11 full time federal agents from other departments within the federal government assigned on a full time basis to investigating this (the Rasmark). Again, this never was true. There was a much larger money laundering investigation being conducted by the USCS Financial task Force. Testimony indicates that the larger case probably focused on Guillermo Portillo. It is doubtful whether the larger case ever had eleven full time federal agents assigned to the case. Testimony indicates that the Rasmark case probably never had more than five or six full time federal agents assigned to it.

37. It is my opinion based on other exaggerations and misrepresentations of facts made by Agent Frost throughout his

deposition, his declaration, and his affidavits for search warrants that Agent Frost deliberately lied to the Ford officials to convey to them that the Rasmark case was much bigger than it ever was.

38. Agent Frost stated that Mr. Gantkessy was interviewed regarding his possible involvement in 'kickback ' violations related to the activities between Mr. Gantkessy and Rasmark. There is no indication that any legitimate investigation was ever conducted by any member of the USCS Financial task Force in that regard. Any such investigation would have necessitated the interviews of Ford clerical and accounting personnel in El Paso, particularly Beverly Enriquez and Manuela Barron. Neither of these individuals were ever interviewed by any member of the USCS Task Force. The facts indicate that Agent Frost merely used the "kickback" issue as an excuse to target Mr. Gantkessy as a potential informant.

39. The statements of Agent Frost regarding any possible investigation being conducted related to "kick-back" violations between Ford and Rasmark Jet Charter, Inc. are further refuted by the inattention to Joe Sudomir, Mr. Gantkassy's El Paso Supervisor. Gail Beach, a competitor of Rasmark, was interviewed by Agents Frost and Mills on 3-9-93. [(See enclosure #2); see App. 1072]. Beach told the Agents that "The Rasmussons were engaged in a 'kick-back' scheme with SUDOMIR and are currently engaged in such a scheme with GANTKESSY". Beach stated that "Deborah Rasmusson was paying SUDOMIR $1,000.00 per trip which SUDOMIR brokered through Rasmark for Ford Favesa."

40. Despite receiving the above information about SUDOMIR from Beach, neither Agent Frost nor any other member of the Task Force, including FBI Agent Acosta, ever made any attempt to interview SUDOMIR or develop any further information to prove or disprove the information furnished by Beach. None of the derogatory information regarding Joe Sudomir was furnished to Ford by Agent Frost or USCS although Mr. Gantkessy was fired and Mr. Sudomir was simply transferred to another city.

41. It is noted that Agent Acosta stated that he presented the

facts of his investigation of "kickbacks" received by Mr. Gantkessy to an Assistant United States Attorney for a prosecutive opinion. Since Agent Acosta's investigation revealed that Mr. Sudomir and not Mr. Gantkessy had the authority to determine which air charter companies were engaged to carry the Ford freight, the AUSA declined federal prosecution against Mr. Gantkessy for "lack of evidence". No effort was made by any member of the Task Force to investigate the activities of Joe Sudomir.

42. It is further noted that Gail Beach stated under oath that when she was interviewed by Agents Frost and Mills on 3-9-93, she advised the Agents that most of her information was based upon "rumor and hearsay". Agent Frost later used much of that same information as though it had been validated.

43. Mr. Gantkessy was fired by Ford and denied his retirement pension after 24 years of honorable employment. The business relationship between Ford and Rasmark Jet Charter, Inc. was also terminated. There is strong testimony which indicates that both the firing of Mr. Gantkessy by Ford and the termination of the Ford-Rasmark business relationship were directly related to the actions of Agent Frost and other USCS personnel who made unauthorized investigative disclosures to Ford.

44. In all my prior law enforcement training, both in the Border Patrol, FBI, and at the state and local level, I have been instructed that "No investigative case information is to be furnished to anyone outside law enforcement". The FBI has a very strict policy on the release of investigative information. Any release of investigative information, even to a law enforcement agency, must be documented by the agent making the release.

45. There is a very strict prohibition against releasing any case information to any civilian. In my total law enforcement career, I have never seen any case where so much information from an active investigative case was shared with a civilian business, such as furnished to Ford by officers of the USCS. The attempts by Agent Frost to justify those disclosures as necessary to further the USCS investigation are

simply not only questionable, they are directly contradicted by the testimony of FBI Agent Acosta on several issues.

46. I entered this case with a fierce loyalty to law enforcement based upon my 32 years in the profession. I told Attorney Sheppard on our first meeting that I would help her seek the truth, nothing more, nothing less. As I read the voluminous investigative reports, declarations, and affidavits, it became more and more obvious to me that Agent Frost not only embellished information which he used in reports, he used information which I believe he knew was false and unreliable. He used such information on at least three affidavits for search warrants and he furnished the information under oath. He later described one piece of false information As "poor sen-tex", poor writing on his part. His efforts to explain and justify the use of the false statements are grossly inadequate for an officer who has taken an oath to uphold the Constitution of the United States.

47. Based upon the other unprofessional actions of Agent Frost throughout the course of the Rasmark investigation, one can only assume that Agent Frosts motives in releasing the information were punitive and vindictive in nature. His frequent use of information which he knew or should have known was false and unreliable is a clear indication that he had no regard for the truth. The assumption that Agent Frost deliberately used false and misleading information in official investigative reports becomes a conclusion after one studies those facts and then compares them with other testimony.

48. Agent Frost's testimony is directly contradicted on several occasions by that of FBI Agent Acosta. His , Agent Frosts testimony during his deposition is evasive at best. The reasons Agent Frost offered for sending the "Poison pen" letter to Ford simply do not coincide with the facts supported by the testimony of Agent Acosta and the eventual facts developed the USCS Task Forces own investigation. It is noted that Agent Frost testified that he drafted the Ford letter which was signed by SAC Lappe. The letter was also read and approved by Michael Wilczewski, Agent Frosts USCS Supervisor and USCS Donnie Reay.

49. I strongly believe that if the FBI reports of Agent Acosta and other supporting documentation not yet made available to Mr. Rasmussons attorney, are released by the court, the activities of Agent Frost will further indicate that he has lied under oath on several occasions.

50. As a former "career law enforcement officer," I am offended and embarrassed by Agent Frost's lack of honesty, fairness, and professional integrity. Not only did he have no regard for the truth, he had no respect for the lives of those people who were the victims of his vindictive actions. Mr. Gantkessy lost a job and a pension which he had earned through 24 years of honorable service to Ford Motor Co.

51. The Rasmark business which was thriving, expanding, and was on the threshold of landing a major national contract with Ford was virtually "shut down." Once all the company records were seized through the USCS Task Force search warrant, it was practically impossible to operate. The fact that the aircraft maintenance records required by FAA were held by Agent Frost for 14 months without any justification, further indicates to me Agent Frost was simply being vindictive. This was simply one more punitive , unjustified action on the part of Agent Frost. The fact that his supervisors at USCS, SAC Michael Lappe, ASAC Donnie Reay, and Group Supervisor Michael Wilczewski did not properly supervise his activities and did nothing to halt his outrageous conduct is an indictment of all those individuals in USCS who were responsible for his actions. The fact that USCS legal counsel for USCS would authorize the release of a letter such as that sent to Ford by SAC Lappe in July 1993 clearly indicates that all Agent Frost's unjustified, outrageous actions were supported by his supervisors and by the Agency itself.

52. Supervisor Wilczewski supervised the day to day activities of Agent Frost. He, Wilczewski, reviewed and approved all Frost's investigative reports, and attended case progress briefings conducted by Agent Frost. As Agent Frost's first line supervisor, Mr. Wilczewski was in a better position than any of the other supervisors to know about Agent Frost's misconduct. Testimony indicates that not only did Mr. Wilczewski not deter Agent Frost from

unreasonable conduct, he, Wilczewski, condoned it by taking no action to stop it. Mr. Wilczewski also knew that the reports which were generated by Agent Frost and contained false and misleading information were being entered into USCS data bases where they were available to other federal and state law enforcement agencies.

/s/ HENRY A. WEBB

State of Texas
County of El Paso

Henry A. Webb, personally appeared before me, and first being duly sworn, declared that he signed this affidavit, and further states that he has read the affidavit and the statements contained therein are true.

Sworn to and subscribed before me this 18th day of March 1997.

/s/ Edward Wagner
Notary Public
My Commission expires on 9/29/99

AFFIDAVIT OF HENRY A. WEBB

NOVEMBER 26, 1996

I Hank [Henry] Webb state that I have shot both still photographs and video film of Julie's Aircraft, located at 6805 Boeing, El Paso, Texas 79925. Julie's Aircraft is located South of Boeing and is in a two story building with three doors facing North towards Boeing.

My still photographs were taken on October 18, 1996, in the afternoon. The photographs were taken from the sidewalk in front of the building, the parking lot, and the second floor balcony at the Residence Inn, Unit 11. The photographs were taken using a 140 mm zoom lens and 35 mm film. In the photographs Ed Wagner entered the middle door of Julie's Aircraft, the only door accessible to the public, and stood inside facing Boeing. From my vantage point on the balcony, I was unable to identify Wagner standing inside the door, and I was also unable to determine if Wagner moved right or left after closing the door.

On November 26, 1996 1 shot a video of the exterior middle door of Julie's Aircraft using Panasonic Camcorder, with a 14 by 20 zoom lens. I again shot footage from the sidewalk in front of the building and from across the street on the second floor balcony at the Residence Inn, Unit 11. Ed Wagner entered the building and stood inside the door facing Boeing. He then moved to the right, and a few seconds later to the left. I was unable to observe Wagner's movements. In addition, Wagner was not visible on the video footage.

/s/ Hank Webb

State of Texas
County of El Paso

Hank Webb, personally appeared before me, and first being duly sworn declared that he signed this affidavit, and further states that he has read the affidavit and the statements contained therein are true.

Sworn to and subscribed before me this 26th day of November, 1996.

/s/ Edward Wagner
Notary Public
My commission expires on 9/29/99

[Paragraph numbers added to text]

AFFIDAVIT OF MARK RIDEN

MARCH 3, 1997

1. I, Mark Riden, state that I was employed as a United States Customs Service (USCS) Special Agent (SA) and Group Supervisor for twenty six and one-half years. I was a group supervisor from approximately February of 1988 until July of 1992. I retired in January of 1997. My experience as a special agent includes participating in multi-agency investigations involving currency violations, drug smuggling, and undercover operations. I also participated in surveillance, and the use of confidential informants. I was assigned to a Drug Enforcement Administration (DEA) Organized Crime Drug Enforcement Task Force (OCDETF) investigation involving multiple subjects, agencies, and multiple violations.

2. Based on my experiences I am knowledgeable of United States Customs Service policies and procedures and their applications to criminal investigations, asset seizures and forfeitures. My experience includes my basic training as a special agent, periodic refresher training, review of the USCS agent's handbook, review of USCS written policy and procedures, and my day to day application of their use as an agent and group supervisor.

3. I know through my experience that you are not allowed to disclose case related information to non law enforcement persons or entities other than to secure information or records. The only provision I am aware of that allows an agent to disclose any information to a non law enforcement person or entity is an investigative disclosure to obtain information. The standard on investigative disclosures is to disclose only the minimum amount of information necessary to obtain the information required. In my twenty six and one-half years experience I have never provided a non law enforcement entity or person a summary or synopsis of my case

or one of my agent's cases to obtain information or records.

4. I also know that the normal USCS procedure or policy is to conduct third party witness interviews with only two agents. This policy or procedure is followed because a witness could feel coerced or intimidated by the presence of more than two agents. In my experience with the USCS and as an agent assigned to the DEA OCDETF Task Force I have never participated in a witness interview with five (5) or more agents. I also know that it is not the normal USCS policy to conduct periodic surveillance of third party witnesses.

5. In my duties and responsibilities as a special agent and group supervisor I worked closely with the USCS inspectors at the ports of entry. In my position I have worked numerous "bridge cases" relating to the seizure of drugs, currency, weapons and other contraband. I know through this experience, that when a person entering the United States from Mexico is found to have a switch blade knife, the normal procedure is to take the knife and to destroy it and allow the person to go on their way unless there are aggravated circumstances such as an assault. I am not aware of any person entering the U.S. from Mexico having a vehicle seized for possession of one-tenth gram of marijuana after 1971. I also am not aware of a person having their vehicle seized for a seizure that small even under the USCS "zero tolerance" policy. The reason that an agent or inspector would not seize a vehicle for that amount of marijuana is that he or she would know the seizure action would not be sustained by the USCS legal counsel or the United States Attorney's office. Prior to May of 1971 vehicles were seized for small amounts of marijuana under old laws or policy.

6. Through my experience as a USCS special agent and group supervisor I have participated in writing and executing search warrants. I have also reviewed search warrants prepared by agents under my supervision. When a witness has denied statements attributed to them in an agent's report, and the agent utilized the report and statements in their affidavit for a search warrant, it is incumbent upon the agent to correctly report the information to the

court and magistrate. It is the responsibility of the agent preparing the report to include all pertinent information that goes to the credibility of a witness. Pertinent information includes the following: whether a witness is intoxicated or high on drugs when they were interviewed, whether the witness had been fired by the person they were being interviewed about, whether the witness was ill, and whether the witness being interviewed was a business competitor of the subject of the interview. The normal USCS procedure is to prepare reports of investigation on all witness interviews and to prepare the reports in a timely fashion, three to five work days.

7. I also know through my experience as a USCS agent and group manager that it is a violation of USCS policy and General Services Administration (GSA) policy to bring alcohol into the USCS office. It is improper to give alcohol to a witness or subject when you are attempting to obtain a consent to search relating to their property or business. Information obtained from any subject that is high on drugs or alcohol would not be credible.

8. In my capacity as a USCS special agent and group manager I am familiar with the Treasury Enforcement Communication System (TECS) lookouts and Federal Aviation Administration (FAA) lookouts. An agent can place a TECS lookout on persons, aircraft, and automobiles entering the United States. The information input into TECS normally includes the agents name and a contact telephone number and the allegation surrounding the lookout. An agent can provide specific instructions regarding the lookout such as: search the person, automobile, or aircraft; identify all persons in the automobile or aircraft; or notify the agent that placed the lookout if the person, automobile, or aircraft enters the United States. FAA lookouts apply to domestic aircraft flights and are used to track the departure and arrival of aircraft. Lookouts are normally placed for a period of thirty days after which time they are removed if there is no related enforcement activity such as a seizure or arrest.

9. I have also participated in extensive surveillance activity as both a USCS special agent and group supervisor. I have

also prepared, reviewed, and approved reports of investigation relating to surveillance activity. The normal procedure is for each agent to prepare a separate report of the activity they personally observed, or to prepare a single report of investigation and identify by event which agent observed the activity. I also know another way to properly document surveillance activity is through the use of a surveillance log which clearly identifies which agent or officer observed the documented activity. It is also normal procedure to state in the surveillance report of investigation how a subject was identified, such as if the subject was known to the agent or officer, or if the subject was identified by a photograph, etc. A vehicle license plate number would not be conclusive evidence of a driver of a vehicle. I know from my experience that a surveillance conducted by multiple agents and related report of investigation which did not identify the agent who observed the documented activity, would be considered unsatisfactory for evidentiary purposes. The USCS, Office of Enforcement, has assigned under it's control the following aircraft; a Cessna 206, , a Cessna Citation, a King Air, and two Blackhawk helicopters assigned to the Albuquerque RAC office.

10. Through my duties as a group supervisor with the USCS I know that a group supervisor is responsible for conducting periodic case reviews, both formal and informal, to ensure that a case or investigation is being properly handled by the agent. Factors normally considered in a case review are the quality of the evidence obtained, timeliness in completing the investigation, and whether the investigative goals or objectives are being met. It is a group supervisor's responsibility to ensure that long term cases or investigations justify the use of the resources employed. Both as a USCS agent and group supervisor I have never been involved in an investigation that lasted over four years and did not result in any arrests or seizures.

/s/ Mark Riden

State of Texas
County of El Paso

Mark Riden, personally appeared before me, and first being duly sworn declared that he signed this affidavit, and further states that he has read the affidavit, and the statements contained therein are true.

Sworn to and subscribed before me this 3rd of March, 1997.

/s/ Edward A. Wagner
Notary Public
My commission expires on 9/29/99

AFFIDAVIT OF MARK RIDEN

MARCH 18, 1997

I, Mark Riden, state that I was employed as a United States Customs Service (USCS) Special Agent (SA) and Group Supervisor for twenty six and one-half years. I was a group supervisor from approximately February of 1988 until July of 1992. I retired in January of 1997. My experience as a special agent includes participating in multi-agency investigations involving currency violations, drug smuggling, and undercover operations. I also participated in surveillance, and the use of confidential informants. I was assigned to a Drug Enforcement Administration (DEA) Organized Crime Drug Enforcement Task Force (OCDETF) investigation involving multiple subjects, agencies, and multiple violations.

Based on my experiences I am knowledgeable of United States Customs Service policies and procedures and their applications to criminal investigations, asset seizures and forfeitures. My experience includes my basic training as a special agent, periodic refresher training, review of the USCS agent's handbook, review of USCS written policy and procedures, and my day to day application of their use as an agent and group supervisor.

I know through my experience that you are not allowed to disclose case related information to non law enforcement persons or entities other than to secure information or records. The only provision I am aware of that allows an agent to disclose any information to a non law enforcement person or entity is an investigative disclosure to obtain information. The standard on investigative disclosures is to disclose only the minimum amount of information necessary to obtain the information required. In my twenty six and one-half years experience I have never provided a non law enforcement entity or person a summary or synopsis of my case

or one of my agent's cases to obtain information or records.

/s/ Mark Riden

State of Texas
County of El Paso

Mark Riden, personally appeared before me, and first being duly sworn declared that he signed this affidavit, and further states that he has read the affidavit, and the statements contained therein are true.

Sworn to and subscribed before me this 18th day of March, 1997.

/s/ Edward Wagner
Notary Public
My commission expires on 9/29/99

Supreme Court, U.S.
FILED

981345 FEB 8 - 1999

OFFICE OF THE CLERK

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

MARK B. RASMUSSON, et. al.,

Petitioners,

v.

LAWRENCE E. FROST, et. al.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

APPENDIX H
SUPPLEMENTAL APPENDIX

SANDRA J. SHEPPARD, Esq.
Counsel of Record
6915 Boeing Drive
El Paso, Texas 79925-1107
(915) 772-4616

Attorney for Petitioners

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

MARK B. RASMUSSON	§	
RASMARK JET CHARTER, INC.,	§	
	§	CIVIL ACTION:
PLAINTIFFS,	§	
	§	EP-95-CA-475-F
VS.	§	
	§	
LAWRENCE E. FROST, ET AL.,	§	
	§	
DEFENDANTS.	§	

AFFIDAVIT OF ANDREW A. GANTKESSY

STATE OF TEXAS
EL PASO COUNTY

On this day personally appeared ANDREW A. GANTKESSY who after being duly sworn stated upon his oath and belief as follows:

1 . "My name is ANDREW A. GANTKESSY, I am over the age of 21 years, and I am competent in all ways to make this oath and affidavit. I have personal knowledge of the facts and circumstances set forth below.

2. "1 have read the Application and Affidavit for Search Warrant that was prepared by Agent Lawrence E. Frost on November 19, 1993, for the Rasmusson residence located at 11157 Leo Collins Drive, El Paso, Texas and the search warrant Application and Affidavit for the Rasmark office located at 6805 Boeing. The Frost Affidavit imputes certain statements to me on page 19(see App. 936, paras 95-100) of the Leo Collins Affidavit and these statements are repeated on pages 17-18 in the Boeing Affidavit (see App. 936, paras 95-100).

3. "On pages 12-13 (see App. 928, paras 57-62) of the Leo Collins affidavit, Agent Frost alleges that officer Gongaware observed a large yellow truck with Chihuahua plates blocking the airport entrance and he investigated. Large yellow trucks with Chihuahua plates entering the airport and proceeding to the Rasmark ramp area was a common occurrence where the auto parts on the trucks was made in Mexico and had to transported from Mexico to the Airport for shipment to the auto manufacturing plant.

4. "On page 13-14 (see App. 929, paras 63-65) of the Leo Collins affidavit, Agent Frost states that on March 1, 1993, Officer DeAngelo stated that he observed the loading of a jet at Rasmark with guards armed with a rifle, posted towards the main airport area and another guard with a rifle posted to watch the south towards Boeing St. Agent Frost states that this event took place on July 24, 1992.

5. "The month of July in 1992 was one of our busy times due to closing out the years models and making final productions runs. While in my job at the Ford Motor Company Favesa warehouse, I frequently would be required by Ford Motor Company assembly plants to utilize Rasmark per their specific request because Rasmark had a strong reputation at Ford of delivering the parts on time.

6. "Often I was at the Rasmark hanger, ramp personally supervising the loading of the aircraft with Ford parts at one and two o'clock in the morning. There was never any guards or security personnel or anyone posted with a rifle on the Rasmark loading area or any where near the Rasmark offices. Had I observed a person with a rifle any where close to the Rasmark hanger, aircraft, or on our loading area, I would have called the police immediately.

7. "In 1991, I was required by Ford Executive manager, Mr. Robert Card, to send a form letter to all potential jet carriers in the El Paso area including Aero, Freight. The purpose of the letter was to question each potential carrier as to their rates and other important matters such as "as soon as possible service" for jet carriers. Rasmark was the only company that provided Ford with all information that Ford requested without requiring Ford sign a contract for services, I was

specifically ordered by Mr. Mr. [sic] Card through Mr. Sal Pianello and Mr. Carl Peugh to use Rasmark as our carrier in El Paso exclusively and Mr. Card stated that Rasmark was number 1 with Ford. This is exactly what I did until mid 1993 when Ford ordered that Active Aero would be Ford's primary jet carrier.

8. The Leo Collins Affidavit at page 19(see App. 936, para 95) states that Customs Agents Schroeder, and Larry Brown, Detective Holland and FBI agent Acosta invaded my office. There were seven of them including Agent Frost. These agents started firing questions at me and I told them that I wanted to speak to my attorney. They told me that if [sic] wanted an attorney that they were going to arrest me. The agents made many statements that I told them were not true but they refused to listen and continued to intimidated me to the point that I merely agreed with whatever they said. At the conclusion of each statement they made, I said well if you say so. The agents told me if I did not say what they wanted they would arrest me. I became ill as a result of the agents threats and I had to leave work to go to my doctor. See Exhibits AG-1 through AG-4 (see App. 331), which is my statement made on August 19, 1993, AG-7, AG-10, AG-12 (see App. 1304), and AG-19(see App. 1305) attached hereto. hereto [sic] are from my file pertaining to my claim against Ford for age discrimination. The Documents AG-12 through AG-20(see Apps. 331, 332, 1304, 1305) were received by me from the Ford Motor Company and each document has a Ford number. For example AG-12 has the Ford number F1000394. Exhibits AG-7 through AG-11 are portions of a document that I prepared for my attorney. This document contains portions of information that pertain to Rasmark, the threats by the agents made against me and other matters relative to my age discrimination complaint.

10. [sic] The worst threat came the day after the agents came to my office. They made me go to their office under threat of arrest if I refused. At their office, they wanted me to wear a wire and get evidence against Rasmark. They said, "we'll tell you what questions to ask." I refused to wear the wire or to entrap anyone. The agents threatened me that they would cause me to lose my job and my pension if I refused to do what they ordered. Agent Frost and the others made good on their threats they caused Ford to fire me and I lost my pension because of the

lies about me they told Ford investigators."

SIGNED ON THIS 17 th DAY OF JULY, 1996.

/s/ Andrew A. Gantkessy
Affiant

SUBSCRIBED AND SWORN TO BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS 17th DAY OF JULY, 1996.

/s/_____
NOTARY PUBLIC IN AND FOR THE
STATE OF TEXAS
MY COMMISSION EXPIRES: 8-21-96

[Paragraph numbers added to text}

AFFIDAVIT OF ANDREW A. GANTKESSY

OCTOBER 3, 1996

I, Andrew A. Gantkessy, make the following free and voluntary statement to Hank Webb and Edward Wagner at El Paso, TX on Oct. 3, 1996.

I reside at 457 El Camino, El Paso, TX 79912.

1. I was employed by Ford Motor Co. for approximately 24 years until I was terminated in October 1993. I believe I was fired by Ford as a direct result of false information which was furnished about me to Ford Motor Co. by Larry Frost and other U.S. Customs officers, including El Paso Special Agent in Charge, Michael Lappe. During the 24 years which I worked for Ford, I had an outstanding employment record which included numerous commendations, outstanding performance ratings and no suspensions or reprimands.

2. The false information furnished to Ford was obtained in the following manner. In June 1993, I was working at my office in El Paso. I was informed that a US Customs officer was at the security door and wished to speak to me. He had not made a prior appointment and I assumed that one of our trucks might have had a problem crossing the bridge into the US from Mexico. When I went to the security door to meet the officer, I was confronted by five or six federal agents and one El Paso police officer. I was taken to a conference room in the building where all the agents started to interrogate me. I asked that my supervisor be allowed to come onto the room but Larry Frost, who seemed to be in charge, denied my request.

3. Frost started to question me in a very aggressive manner, sometimes shouting and using profanity. Within a few minutes I became very upset and frightened. I asked permission to call my wife and to call an attorney. I was told that if I got out of the chair in which I was sitting,

I would be arrested, handcuffed, and "dragged out of the building in full view of the other employees." The agents continued to question me non-stop for several minutes about Mark and Debbie Rasmussen. They also accused me of accepting money and free transportation from the Rasmussens. They claimed that I had received up to $5,000.00 kickback for all flights booked with Rasmark Air Charter. This was not possible since most of the flights cost less that $5,000.00 total. For several minutes I denied all the accusations being made against me by the agents.

4. After a while I started to feel sick. I was under a Doctor's care at the time being treated for a heart condition. I had triple by-pass heart surgery in 1987 and had a stroke in May 1990. I was afraid that I was about to have another heart attack. In order to get out of the room, I finally told the agents that I would-agree to anything they said. Once I said that and stopped denying their accusations, I was allowed to leave the room. Any admissions I made during the last few minutes with the agents were made out of fear and intimidation and were not true. I was feeling sick and went directly home. My wife drove me to my Doctor either that afternoon or first thing the next morning. Before the agents released me, I was ordered to report to the US Customs office on Viscount Blvd. the following day. I was told that if I failed to show up at the Customs office, I would be arrested.

5. The following day I went to the Customs office where I was met by Customs Agent Fred Schroeder and FBI Agent Joe Acosta. We went to a small room and Agent Schroeder started to ask questions. He asked me several questions about Mark and Debbie Rasmussen. I told him that I was not aware of any illegal activities on the part of either Mark or Debbie or any employee of Rasmark Air Charter.Schroeder asked me if I would be willing to wear a "wire" and record conversations with the Rasmussens. I told him that I would think about it and give him an answer the next day. He also asked by to make a phone call from his office to Mark Rasmussen and allow him, Schroeder, to record the call. He told me that he would tell me what to say. I refused to make the phone call. Before allowing me to leave the Customs office, Agent Schroeder again made threats against me, telling me that I would lose my job and go to jail if I refused to cooperate with

him and the other agents. He assured me that if I cooperated,, nothing would happen to me.

6. The following day, I went to a lawyer, Mr. Tony Silva, and told him what had happened. He instructed me to refuse to wear the wire and refuse to cooperate with any of the federal agents. When I called Schroeder and told him that I would not wear the wire, he seemed very upset. He told me that I was making a big mistake and that he and the other agents would start "playing hardball". I now realize that all the threats to arrest me made by the agents must have been a bluff since I was never contacted or bothered by the agents again. I do believe that after I refused to cooperate with them, the Customs agents, Larry Frost and others, furnished false information about me to my employer, Ford Motor Company which caused me to lose my job and my retirement.

7. I was first confronted by Ford Management officials about taking kickbacks and free transportation from Rasmark in October 1992. This meeting took place at the Ford Headquarters in Michigan. Present at the meeting were Tim Pomaville and Jim Lanni. I thought that I was going to be asked questions about the activities of Joe Sudomir who had been transferred out of El Paso. I was surprised when all the questions were directed towards me and my relationship with Rasmark Air Charter. From the text of the questions asked at that meeting and the questions asked by Larry Frost and the other agents, I now believe that Ford officials had been furnished false information about me by Frost or other Customs officers which led to the accusations made against me by my superiors. I was accused of accepting money and free transportation from Mark and Debbie Rasmussen. I denied all the allegations but I was told that if there were any more such allegations in the future, I would lose my job.

8. In August 1993 1 met again with Ford Management officials at FAVESA in El Paso at their request. Present at that meeting were my supervisor, Tim Lanni, Tim Pomaville, and two other management officials whose names I do not recall. They again accused me of taking kickbacks from Rasmark and receiving free transportation. Although there was no proof of any of the allegations and I denied all of them, I was suspended with pay after the meeting and I was terminated by Ford

in October 1993. The official reason given f or my termination was "for the good of the Company".

9. Prior to my being terminated by Ford, I was told by Bill Dumead, a Ford management official, that David Blair, another Ford manager, was in trouble for accepting free out of state golf outings. I do not know what happened, if anything, to Blair. I also knew that Bill Dumead accepted a free jacket from one of the carrier services which was a violation of Ford Company policy. George Powers and other FAVESA managers also received free back pack radios from W.H. Froh, one of the carriers used by Ford. These radios were used for both personal and business. This was also a violation of Ford policy.

10. I never accepted any money, free transportation, or other gratuity from Mark or Debbie Rasmussen or any other Rasmark employee. On one occasion, I loaned Debbie about $450.00 cash which she used to buy a gun as a birthday gift for Mark. She repaid me in cash the following day. once when we were in Las Vegas, Mark loaned me about $600.00 in poker chips. I did not use the chips and returned them to Mark the same night. On several occasions Rasmark sent a FAX to all the FAVESA employees offering trips on Rasmark aircraft at current airline rates. The trips did not include any tickets, money or other gratuities. The trips were usually to football games.

11. On the occasions when I flew on Rasmark aircraft, I always paid for my fare in cash. I determined the fare by calling one of the commercial airlines to obtain the amount. I then paid Debbie for the fare in cash. I deny ever accepting any cash or other gratuity from Mark or Debbie or any other Rasmark employee. I also deny that I ever accepted any "sexual favors" f rom Debbie Rasmussen or anyone else.

12. I never used Rasmark Charter unless I was authorized to do so by one of my superiors. The Rasmark freight rates were consistently lower that the other air carriers in the El Paso area and they provided more reliable service. There was never any double billing since this would not have been possible with the accounting voucher system used by Ford.

13. After I was fired by Ford, I applied for my retirement. I received three or four retirement checks and was then informed that my case had been reviewed and my retirement denied. I was forced to repay Ford for the retirement checks which I had received. I am convinced that my termination by Ford and the loss of my retirement benefits were directly related to the false information furnished to Ford by Larry Frost and Michael Lappe and possibly other federal agents. During the time when the agents were trying to force me to cooperate with them, they told me several times that if I refused to cooperate, they would see to it that I lost my job and my retirement. They apparently made good on their threats.

14. The information on which Ford based my termination was no doubt a result of my interrogation by Larry Frost and the other agents in June 1993. No written statement of my alleged admissions was ever shown to me. I seriously question the accuracy of the information which US Customs officers furnished to Ford management and which was later used as a basis to end my career with Ford. I can only assume that Frost and the other agents wrote the statement to suit their purposes and that they editorialized the contents. Unfortunately for me, I was never allowed to see a copy of the statement.

I have read the above statement consisting of this page and six other pages. The information contained in the statement is true and correct to the best of my knowledge.

Signed this 3rd day of October, 1996.

/s/ ANDREW A. GANTKESSY
AFFIANT

SUBSCRIBED AND SWORN TO BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS THIRD DAY OF OCTOBER, 1996.

/s/ Edward Wagner
NOTARY PUBLIC IN AND FOR THE
STATE OF TEXAS
My Commission expires: 9/29/99

/s/ Henry A. Webb
Witness

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FILED: August 15, 1996

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

MARK B. RASMUSSON	§	
RASMARK JET CHARTER, INC.,	§	
DEBORAH L. RASMUSSON,	§	CIVIL ACTION:
ANDREW A. GANTKESSY,	§	EP-95-CA-475-F
	§	
PLAINTIFFS,	§	
	§	
	§	
VS.	§	
	§	
LAWRENCE E. FROST, ET AL.,	§	

PLAINTIFFS' PRODUCTION REQUEST FOR QUALIFIED IMMUNITY

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW Plaintiffs' Mark B. Rasmusson, et al., by and through their attorney of record, Sandra J. Sheppard of the firm of Sheppard & Associates and files Plaintiffs' Production Request for Qualified Immunity:

1. All case initiation and approval documents relating to RASMARK Jet Charter, Inc., Mark B. Rasmusson,- Deborah L. Rasmusson, and Andrew A. Gantkessy, (Plaintiffs) by the United States Customs Service (USCS), Internal Revenue Service (IRS), Federal Bureau of Investigation (FBI), Drug Enforcement Administration (DEA), -U. S. Border Patrol (USBP), Immigration and Naturalization Service (INS), Bureau of Alcohol, Tobacco, & Firearms (BATF), U. S. Secret Service (USSS), U. S. Marshals Service (USMS), El Paso County

Sheriff's Office (EPSO), and the El Paso Police Department (EPPD) for the years 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, and 1995.

2. All Grand Jury requests and approval documents related-'to the Plaintiffs for the years 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, and 1995.

3. All Undercover requests and approvals relating to the Plaintiffs, including but not limited to Operation Transwestern by the USCS, IRS, FBI DEA, USBP, INS, BATF, USSS, USMS, EPSO, and EPPD for the years 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994 and 1995.

4. All documents reflecting requests and approval, for confidential expenditures by the USCS, IRS, FBI, DEA, USBP, INS, BATF, USSS, USMS, EPSO, and EPPD used in the investigation of the Plaintiffs and Operation Transwestern and any transfer of funds from any ongoing undercover operation to the investigation of the Plaintiffs for the years 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, and 1995.

5. All documents shoving requests, approvals and payments to confidential informants (paid and not paid) by the USCS, IRS, FBI, DEA, USBP, INS, BATF, USSS, USMS, EPSO, and EPPD used during the investigation of the Plaintiffs for the years 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994 and 1995.

6. The disclosure of the identity of confidential informants or sources, paid or not paid, by the USCS, IRS, FBI, DEA, USBP, INS, BATF, USSS, USMS, EPSO and EPPD during the investigation of the Plaintiffs who were either past or present employees of the Plaintiffs, including competitors of RASMARK, or active law enforcement officers for the years 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, and 1995.

7. All documents reflecting requests and approvals for pen registers, telephone/wiretaps and other electronic monitoring by the

USCS, IRS, FBI, DEA, USBP, INS, BATF, USSS, USMS, EPSO, and EPPD during the investigation of the Plaintiffs for the years 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994 and 1995.

8. All memorandums, reports, summaries, statements and affidavits prepared by the USCS, IRS, FBI, DEA, USBP, INS, BATF, USSS, USMS, EPSO, and EPPD during the investigation of the Plaintiffs for the years 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994 and 1995.

9. All agents or officers diary entries or activity reports relating to the investigation of the Plaintiffs by the USCS, IRS, FBI, DEA, USBP, INS, BATF,USSS, USMS EPSO, EPPD for the years 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994 and 1995.

10. Listing of all TECS lookouts placed on the Plaintiffs, including persons, aircraft, and vehicles for the years 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994 and 1995 placed by the USCS, IRS, FBI, DEA, USBPI INS, BATF, USSS, USMS, EPSO and EPPD.

11. All requests for outside employment and related approval or disapproval by the EPPD for officer George Salas for the years 1991, 1992, 1993, 1994 and 1995.

12. Copies of all personnel evaluations for George Salas by the EPPD as they relate to the investigation of the Plaintiffs for the years 1991, 1992, 1993, 1994 and 1995.

13. EPPD personnel records which show the duties, responsibilities and all assigned details of officer George Salas for the years 1991, 1992, 1993, 1994 and 1995.

14. All requests and approvals for Title 26 disclosure by the USCS, FBI, DEA, USBP, INS, BATF, USSS, and USMS to the IRS related to the Plaintiffs for the years 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994 and 1995.

15. All case closing documents related to the Plaintiffs by the USCS, IRS, FBI, DEA, USBP, INS, BATF, USSS, USMS, EPSO and EPPD, including those reflecting the date closed for the years 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994 and 1995.

16. All prosecution reports submitted to the U. S. Attorney's Office by USCS, IRS, FBI, DEA, USBP, INS, BATF, USSS, USMS, EPSO and APTEST relating to the Plaintiffs for the years 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992 and 1993, 1994 and 1995.

17. All records reflecting drug, currency and other property seizures made by the USCS, IRS, FBI, DEA, USBP, INS BATF, USSS, USMS, EPSO, and EPPD from the Plaintiffs for the years 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994 and 1995.

18. A financial summary of all agents salaries and overtime expended, and a financial summary of all other expenditures made by the USCS, IRS, FBI, DEA, USBP, INS, BATF, USSS, USMS, EPSO and EPPD, including but not limited to confidential expenditures, undercover expenditures, travel expenses, and informants payments made relating to the investigation of the Plaintiffs for the years 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994 and 1995.

19. Complete copies of the USCS, IRS, FBI, DEA, USBP, INS, BATF, USSS, USMS, EPSO and EPPD agents and police officers handbooks relating to investigative disclosures, non investigative disclosures, initiation of undercover operations, transfers of funds between undercover operational utilization of other law enforcement personnel as informants or confidential sources, trash pickups, and the treatment of minors for the years 1991, 1992, 1993, 1994, 1995.

20. Results of all criminal (prosecution and non prosecution) and civil examinations by the IRS of the Plaintiffs for the years 1985, 1986, 1987, 1988, 1989,1990, 1991, 1992, 1993, 1994 and 1995.

21. Records of all referrals made by the IRS Criminal Investigation Division to the IRS Examination Division concerning the Plaintiffs for the years 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994 and 1995.

22. El Paso Sanitation Department guidelines and policies relating to the use of trash pickups by law enforcement agencies for the years 1990, 1991, 1992, 1993, 1994 and 1995.

23. The names of all Sanitation Department employees who participated in trash pickups on the Plaintiffs, including but not limited to 11157 Leo Collins and 6805 Boeing Drive both located in El Paso, Texas for the years 1990, 1991, 1992, 1993, 1994 and 1995.

24. All internal memorandum or records reflecting violations of agency guidelines, manuals, or procedures by USCS, IRS, DEA, USBP, INS, BATF, USSS, USMS, EPSO, and EPPD relating to the investigation of the Plaintiffs for the years 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994 and 1995.

25. A copy of all videotape recordings made by FBI SA Joe Acosta on November 22, 1993 before and after the execution of the search of the Rasmusson residence located at 11157 Leo Collins Dr. in El Paso, Texas.

26. A copy of all documents and/or reports of investigation of the interview of Rasmark pilot on June 1, 1993 by SA Frost, SA Schroeder and Officer Holland. (This pilot was probable Mr. William E, Jiles who resides at 2828 Locharen Dr,, Plano, TX 76023.)

27. A copy of the administrative subpoena served upon the Ford Motor company World Headquarters by the FBI Detroit Field office in late October, 1992. See Acosta Declaration page 3 par. 14.

28. A copy of all the documents received by FBI pursuant to the Administrative subpoena identified in #3 above.

29. A copy of all subpoenas referred to in the Declaration of SA Frost page 2 paragraph 11.

30. A copy of all documents obtained by Customs Service Auditor, Hector Barrera or SA Frost pursuant to the subpoenas referred to in paragraph 5 above.

31. A copy of all letters memorandums or other correspondence or documents prepared by SA Frost for the signature of SAC Lappe relating to the investigation of the Plaintiffs for the years 1991, 1992, 1993, 1994 and 1995.

32. A copy of all documents and items alleged in the Frost Affidavit to have been seized from residential trash including but not limited to the following:

a. Airport landing receipt retrieved by from trash on March 18, 1993.

b. Computer generated balance sheet reflecting four flight invoices retrieved on March 22, 1993.

c. BANAMEX deposit slip in the amount of 15,216,055.00 dated July 23, 1992 and retrieved on April 5, 1993.

The following are alleged to have been retrieved on April 8, 1993:

d. Two pages from a personal phone book.

e. Internal telephone or intercom listing for phones and fax machines

f. A yellow sheet of 8.5 x 11 paper with notation King Air Albq with the names Juan & Tim.

g. Two American Express receipts one dated March 1, 1993.

The following are alleged to have been seized from the residential trash on April 19, 1993:

h. Blank Note pad from Rasmark Jet Charter.

1. Sheet of paper from a MZM delivery service.

j. A letter from the Sonitrol alarm company.

k. A letter and price list from Phillips 66 Company.

1. A mexican permit for Anna Rasmusson to travel by aircraft into Mexico dated December 30, 1992.

m. Pilot duty logs dated in 1992 and 1993 and found on May 6, 1993.

n. Folded up advertisement form from the Internal Revenue giving instructions for cash purchases over $10,000.

0. Announcement for neighborhood watch program retrieved on June 7, 1993.

p- Letter from Deborah Rasmusson to all company employees retrieved on June 11, 1993.

q. Questionnaire from Ford Motor company, envelope from Golf Digest and a bill for$73.17 retrieved on June 17, 1993.

r. Envelope with the name Bill Jilles and phone number retrieved on June 28, 1993.

The following are alleged to have been seized from residential trash on July 26, 1993.,

s. A letter from Fields and Healy, Attorneys at Law.

t. A telephone listing.

u. A listing of seven credit cards.

v. A page from a date book.

w. A check stub dated 4-05-93.

x. A FAX dated 5-26-93.

y. A FAX dated 5-27-93 about aircraft insurance.

The following are alleged to have been seized from residential trash on August 16, 1993:

z. Statement of interest income from Avon National Bank.

aa. Pages from a personal telephone book.

ab. A telephone list for Rasmark Jet Charter employees.

ac. Notice of insufficient funds from Sun World Savings retrieved on August 23, 1993.

ad. 8.5 x 11 yellow paper with dates, names of files, and number of disk found on September 20, 1993.

The following are alleged to have been seized from residential trash on October 26, 1993:

ae. Six blank checks in the name of Debra Rasmusson.

af. Check stub number 0581.

ag. Bill from Safeguard Business Systems dated July 26, 1993.

ah. Commission note dated 3/17 with initials DMJ alleged to have been seized on November 1, 1993.

ai. Commission note dated in the amount of $726.96 with initials DNU alleged to have been seized on November 1, 1993.

The following are alleged to have been seized from residential trash on November 4, 1993:

aj. Memo paper with Cargo pirates on top.

ak. A form from San Carlos country Club.

al. A torn up envelope.

am. An envelope from Ginnings Birkelbach & Keith attorneys.

34. Report dated June 7, 1993 by SA Joe Acosta regarding an interview of a confidential informant.

35. Report from SA Acosta given to SA Frost on November 3, 1993, regarding statements made by confidential Informant FBI-1.

36. Report of SA Mills dated September 16, 1992 regarding a red Mercedes 560SL at the Rasmark Jet Charter office parking lot.

37. Copy of all reports pertaining to the incident of SA Frost's seizure of Deborah Rasmusson's Red Mercedes at the Ysleta Port of Entry on November 10, 1992.

38. Copy of the report of interview of Arturo Vargas on February 12, 1993 by SA Schroeder and Detective Holland.

39. A copy of the report of Detective James Holland regarding his interview of Officer Clifford Gongaware on March 1, 1993.

40. A copy of the report of Detective Holland regarding information provided by Officer Andrew DeAngelo on March 1, 1993.

41. A copy of the report of interview of Gail Beech by SA Frost and Eric Mills on March 9, 1993.

42. A copy of the report or notes by SA Frost on March-15, 1993, of his interview of Steve Thorn.

43. A copy of the report of investigation by SA Schroeder and/or Detective Holland regarding their interview of Chris Hines on March 16, 1993.

44. A copy of the report of surveillance on the Rasmark Jet Charter offices on May 3, 1993 by Detective Jerry Keith.

45. A copy of the report of interview of Joe Seaverns by SA Schroeder and SA Joe Acosta on May 11, 1993.

46. A copy of the affidavit of Jerry Burnett dated May 21, 1993.

47. A copy of the Banamex computer printout obtained by SA Frost on May 24, 1993.

48. A copy of the report of interview of Mr. Gantkessy on June 2, 1993 and June 3, 1993 by agents SA Schroeder, SA Frost, James Holland, Joe Acosta and other agents.

49. A copy of the report of interview of Irasema Sanchez on November 4, 1993 by Detective Holland.

50. A copy of all notes, reports, summaries, of information provided by George Salas to SA Frost or other task force agents or officers during the period January, 1992 through January, 1995.

51. A copy of all reports of interview of Lori Nelson and letters or other correspondence regarding Mark Rasmusson, Jr. in early June, 1992.

52. A copy of all reports of interview of attorney William Cole on June 17, 1992 or letters or other correspondences.

53. A copy of all reports or analysis of the records seized by SA Frost on May 24, 1992, from Deborah Rasmusson at the Diamond Shamrock store prepared by any and all members of the Financial Task Force led by SA Frost.

54. A copy of each of the 98 reports prepared by SA Schroeder during the period he was a team leader for the Rasmusson portion of the larger money laundering investigation.

55. A copy of all surveillance reports prepared by SA King as to his surveillance of Plaintiffs between September 8, 1993 and September 15, 1993.

56. A copy of all photographs and/or videotape made by SA King during the search of the Rasmark office on November 22, 1993.

57. A copy of all Operation Transwestem. monthly reports relating to the investigation of the Plaintiffs for the years 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994 and 1995.

58. A copy of all Operation Red Chili Monthly Reports relating to the investigation of the Plaintiffs for the years 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 19§4 and 1995.

59. A copy of all internal audits and Management Inspection division Audit reports on Operation Transwestern and on Operation Red Chili.

60. A copy of Operation Transwestern Case Chronology and Review Form relating to the investigation of the Plaintiffs -for the years 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994 and 1995.

61. A copy of the Operation Red Chili Case Chronology and Review Form for the years 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, and 1995.

62. A copy of the Operation Portillo or what ever code name was assigned to the Plaintiffs' case or cases Case Chronology and Review Form for the years 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994 and 1995.

63. A copy of the salvage or repair paperwork for the camera lens that SA King alleges malfunctioned during the execution of the search warrant of November 22, 1993.

64. A copy of all reports of investigation as to interviews of former Rasmark employees, acquaintances, and business associates of

Mark B. Rasmusson, Deborah L. Rasmusson, and Andrew A. Gantkessy for the years 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994 and 1995.

65. A copy of all surveillance records of the Rasmusson residences, including in locations other than El Paso, Texas, for the years 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994 and 1995.

66. A copy of all the surveillance records of the Rasmark office, in El Paso, Texas and previous location in Nevada for the years 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994 and 1995.

67. A copy of all reports used to brief SAC Lappe as to the progress of the investigation of Rasmark and the Rasmussons for the years 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994 and 1995.

68. A copy of the transcripts of SA Perkins grand jury testimony on September 19, 1990 and a copy of all documents that SA Perkins presented to the grand jury as evidence to support indictment of Mark B. Rasmusson.

69. A copy of an unredacted version of DEA-6 ROI dated September 17, 1990, in case M7-90-ZO02 pertaining to the interview of Mark and Deborah Rasmusson and other Rasmark employees.

70. A copy of SA Hivick report of her surveillance of the Rasmark offices on August 20, 1992.

71. A copy of all reports of investigation pertaining to the search and seizure of Rasmark aircraft on or about May, 1993, June 1, 1993, June 16, 1993 and September 1, 1993.

72. A copy of all TECS pertaining to aircraft owned by Rasmark during the years 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994 and 1995.

73. A copy of the report of investigation regarding the interview of Mark B. Rasmusson on December 8, 1992, by SA Hivick and SA Searls.

74. A copy of the report of SA Hivick as to the search of the Rasmark offices on November 22, 1993.

75. A copy of all notes, reports, prepared by Neil Baker regarding his retrieval of trash, surveillance and other -minor investigative duties.

76. A copy of all notes, reports, prepared by Jerry Keith regarding his retrieval of trash, surveillance and other minor investigative duties.

77. A copy of all records pertaining to sharing of seized assets between USCS and IRS, FBI, DEA, USBP, INS, BATF, USSS, USMS, EPSO and EPPD.

78. A copy of all records and information that SAC George McNenney (the person who took Michael Lappe's SAC position when Lappe was transferred to The Hague or to some other location, that is, the present SAC in charge of the Customs Office of Enforcement in El Paso, Texas) submitted to the Department of Justice in a last ditch effort to get Mark Rasmusson indicted.

79. A copy of the Headquarters Proposal and Authori zation for operation Transwestern.

80. A copy of the Headquarters Proposal and Authorization for Operation Red Chili.

81. A copy of the Headquarters Proposal and Authorization for Operation Portillo or what ever code name is used for the investigation of the Plaintiffs.

82. A copy of the AUO time sheett for former ASAC Donald Reay for the dates May 23, 24, and 25 of 1992.

83. A copy of all funding approval for the off-site from the Multi-County Task Force location at 8037 Lockheed to the location at 9400 Viscount financial task force that investigated Rasmark and the Rasmussons.

84. A copy of all complaints filed by retired Group Supervisor Ward Olson against SAC Lappe and the documents created during the course of the investigation of these complaints pertaining to the unlawful taking of funds from Olson's undercover operation.

85. A copy of all records that show the approval by John E. Hensley for the allocation of funds to conduct a special operation against the Plaintiffs.

86. A copy of the Report of Investigation of the Treasury OIG investigation of Michael Lappe case number I-SO-92-003 including 57 exhibits.

87. All records of the El Paso Animal Control Division showing the recovery of either a black wild cat, rabid or otherwise from the residence of Deborah L. Rasmusson at 11157 Leo Collins, El Paso, Texas 1990 to 1994.

88. All records of the EPPD Bomb Squad pertaining to the object that appeared to be a bomb, but determined to be a fake bomb, at the residence of Deborah Rasmusson located at 11157 Leo Collins Drive, El Paso, Texas, as reported by EPPD officer George Salas between January 1992 and May 23, 1992.

89. All records from State National Bank, Texas Commerce Bank, El Paso State Bank, Avon National, Merill Lynch, Wells Fargo, or any other financial institution used by the Mark B. Rasmusson, Deborah Rasmusson or Rasmark Jet Charter, Inc., for any notes, papers, documents relating to contacts with any bank employee by any law enforcement officer regarding any loan request, checking account, or other financial transaction by Rasmark, Mark o r Deborah Rasmusson.

90. The document presented to Deborah L. Rasmusson by

Lawrence E. Frost at the Customs Office on viscount authorizing surrender of Rasmark aircrafts and assets to the U. S. Government on May 23, 1992.

91. All investigative reports prepared by Phil Asiala and/or Tim Pomaville of Ford Motor Company pertaining to Andrew A. Gantkessy, Mark B. Rasmusson, Deborah L. Rasmusson and Rasmark Jet Charter, Inc., including but not limited to, investigation of Rasmark invoices for any type of irregularities, and reports that were sent to any law enforcement agency, whether federal or state for the years 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995 and 1996.

92. Copy of all investigative reports and/or correspondence received by Phil Asiala and/or Tim Pomaville or any other Ford employee, from any law enforcement agency, whether federal or state pertaining to Mark B. Rasmusson, Deborah L. Rasmusson, Andrew A. Gantkessy and/or Rasmark Jet Charter Inc for the years 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995 and 1996.

93. Records of all Forms 4789 Currency Transaction Report (CTR's),(enforced by IRS); Forms 4790 Currency Monetary Instrument Report (CMIRs) (enforced by USCS), and Forms 8300 Record of Currency Transaction for a trade or business (enforced by IRS) filed by Rasmark Jet Charter, Inc.

Respectively submitted,

SHEPPARD & ASSOCIATES

/s/ SANDRA JACKSON SHEPPARD
State Bar No. 00786414
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FILED: March 18, 1997

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

MARK B. RASMUSSON, ET AL.,	§	
	§	
PLAINTIFFS,	§	CIVIL ACTION:
	§	EP-95-CA-475-F
	§	
vs.	§	
	§	
LAWRENCE E. FROST, ET AL.,	§	
	§	
DEFENDANTS	§	

MOTION FOR RECONSIDERATION OF THE COURTS ORDER DENYING PLAINTIFFS MOTION TO ADD U.S. CUSTOMS SERVICE AS PARTY-DEFENDANT IN PLAINTIFFS THIRD AMENDED COMPLAINT

TO THE JUDGE OF SAID COURT:

COMES NOW PLAINTIFFS, Mark B. Rasmusson, et al., by and through their undersigned attorney, Sandra Jackson Sheppard of the firm of Sheppard & Associates and pursuant the Court's telephonic instructions requiring Plaintiffs to file a motion for reconsideration of the Courts denial of plaintiffs motion to add the U. S. Customs Service as a party defendant as to Privacy Act violations only.

1. Plaintiffs requested leave to add the United States Customs Service as a party defendant in this lawsuit for violation of the Privacy Act 5 U.S.C. § 552a. Where employees or agents of any federal agency violate the provisions of the Privacy Act, the Act confers a private right of action and waives Sovereign immunity of the United States for

purpose of suit. The Privacy Act specifically requires the agency to be the proper party defendant in any suit brought for Privacy Act violations.

2. Plaintiffs incorporate herein Plaintiffs Reply To Federal Defendants Opposition To Adding United States Customs Service As Party, ("Plaintiffs Reply") filed on March 13, 1997, as if fully set in Plaintiffs Motion For Reconsideration Of The Courts Order Denying Plaintiffs Motion To Add U. S. Customs Service As A Party Defendant In Plaintiffs Third Amended Complaint.

3. Defendants oppose adding U.S. Customs Service as a party defendant on the ground that plaintiffs stating that "no evidence to date shows ... that any USCS employee has violated any of Plaintiffs rights protected by the Privacy Act." Defendants statement is not true. The most glaring violation of the Privacy Act by Defendants Frost, Reay, Wilczewski, and Lappe is the letter written to The Ford Motor Company on July 26, 1993. This letter is attached to Plaintiffs Second Amended Petition as Exhibit 3. This letter fails to comply with any of disclosure provisions of the Privacy Act. Defendants allege that any Privacy Act violation is time barred. However, the Defendants failed to establish a date that Plaintiffs knew or should have known of the existence of the letter that would start the limitations clock. The Lappe letter and other documents that show Privacy Act violations were obtained from Mr. Silvas file on Plaintiff Gantkessys claim of discrimination against him by The Ford Motor Company. The EEOC obtained the Lappe letter and other documents reflecting violation of Plaintiffs rights under the Privacy Act from the Ford Motor Company. See PLAINTIFFS REPLY.

4. At the time Lappe wrote and sent the July 26, 1993, letter to Ford, Lappe did not send a request for permission from Plaintiffs to disclose false and misleading information to Ford nor did Lappe send Plaintiffs Gantkessy and Mark and Deborah Rasmusson a copy of the letter.

5. The Privacy Act 552a (g)(1)(C) provides

"Whenever any agency fails to maintain any record

> concerning any individual with such accuracy, relevance, timeliness, and completeness as is necessary to assure fairness in any determination relating to the qualifications, character, rights, or opportunities of, or benefits to the individual that may be made on the basis of such record, and consequently a determination is made which is adverse to the individual;" or section 552a(g) (4) provides "In any suit brought under the provisions of subsection (g)(1)(C) or (D) of this section in which the court determines that the agency acted in a manner which was intentional or willful, the United States shall be liable to the individual in an amount equal to the sum of (A) actual damages sustained by the individual as a result of the refusal or failure, but in no case shall a person entitled to recovery receive less than the sum of $1,000; and (B) the costs of the action together with reasonable attorney fees as determined by the court."

Section 552a(g)(5) provides:

> "An action to enforce any liability under this section may be brought in the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, without regard to the amount in controversy, within two years from the date on which the cause of action arises, except that where an agency has materially and willfully misrepresented any information required under this section to be disclosed to an individual and the information so misrepresented is material to the establishment of the liability of the agency to the individual under this section, the action may be brought at any time within two year after discovery by the individual of the misrepresentation."

6. In *Johnson Department of Treasury, Internal Revenue*

Service. 700 f.2d 971 (5th Cir.1983) discussed the Privacy Act in detail. The Johnson Court found that the standard for maintaining an action under the Privacy Act: "In a suit f or damages, the amendment reflects a belief that a finding of willful, arbitrary, or capricious action is too harsh a standard of proof for an individual to exercise the rights granted by this legislation. Thus the standard for recovery of damages was reduced to willful or intentional action by an agency. On a continuum between negligence and the very high standard of willful, arbitrary, or capricious conduct, this standard is viewed as only somewhat greater than gross negligence."

7. The Court requested that Plaintiffs show in excruciating detail that the U. S. Customs acted with malice. In *Duffy v. Leadina Edge Products, Inc.*, 44 F.3d 308 (5 th Cir.1995) the Fifth Circuit reviewed the definition of malice. The Court referred to the common law definition, "malice has been defined as ill will, bad or evil motive, or such gross indifference or reckless disregard of the rights of others as to amount to a willful or wanton act." Quoting *Marathon Oil Co.*, 682 S.W.2d at 631. Actual malice in the defamation of character sense was defined by the U. S. Supreme Court in *New York Times v. Sullivan*, 376 U. S. 254 (1964) which stated "actual malice is not ill will; it is the making of a statement with knowledge that it is false, or with reckless disregard of whether it is true." Proof of ill will or animosity is not required to show actual malice, evidence of ulterior motive can often bolster an inference of actual malice. *Duffy v. Leading Edge Products. Inc., supra* at note 10. In addition, *In Brown v. Petrolite Corporation*, 965 F.2d 38 (5 th Cir.1992) the Fifth Circuit observed that "a court or jury may infer actual malice from objective circumstantial evidence which can override a defendants protestations of good faith. Quoting *Schiavone Construction Co. v. Time. Inc.*, 847 f.2d 1069, 1090 (3d Cir.1988).

8. From the words and actions of the Defendants a reasonable inference of actual malice can be derived.

FACTS SUPPORT ACTUAL MALICE

9. On or about July 10, 1992 SA FROST contacted Lori Nelson, the ex-wife of Mark B. Rasmusson and the mother of Mr. Rasmussons [sic] son Mark, Jr., under the pretext of obtaining information. FROST so alarmed her that Ms. Nelson had her attorney William Cole to contact FROST.

10. After his conversation with FROST, Attorney Cole filed a motion to modify visitation rights and filed his affidavit (see App. 1292) documenting the conversation with FROST. FROST made the following false disclosures to COLE:

(1) that the Rasmussons were still under investigation by federal authorities relating to the Jesus FLORES criminal organization;

(2) that the criminal charges had been dismissed against Mark B. Rasmusson because a witness failed to appear and testify;

(3) that within the previous 30 days Debra Rasmusson had come into his office high on controlled substances and had admitted that she was addicted to controlled substances and had been f or many years;

(4) that Debra Rasmusson told FROST that she was carrying a weapon because she thought her husband, Mark B. Rasmusson, and his friends, were trying to kill her because she was a security risk.

10a. Each referenced inflammatory disclosure made by FROST was uncorroborated by any type of independent corroborating evidence. FROST true pure [purpose] for contacting Lori Nelson was to retaliate against Mark and Deborah Rasmusson because FROST, on behalf of himself , USCS, and other members of the Financial Task Force, failed on May 23, 1992 to coerce Deborah Rasmusson into signing a consent to search form for the Rasmussons residence and their business, Rasmark Jet Charter, Inc. Our expert witness, Edward Wagner, in his affidavit, states that the "There is no indication that agent Frost ever

asked Mr. Cole for any information, or that he prepared a report relating to this contact. There is no investigative purpose to the disclosures. The disclosures made by agent Frost clearly exceed the Dept. Of Treasury standard and were clearly made with a vindictive and malicious purpose to punish the Rasmussons because Deborah Rasmusson refused to sign a consent to search form for the offices of RASMARK when she was detained and interviewed on May 23, 1992, " (see Affidavit of Edward H. Wagner, Pages 2-3). [See App.1406, ¶ 6].

10b. Additionally, our expert witness, Henry A. Webb, states in his affidavit that "There clearly was no investigative purpose in Agent Frost furnishing the information to either Ms. Nelson or Mr. Cole. There is no information either from DEA or any other agency to support Agent Frosts missing witness statement," (see Affidavit of Henry A. Webb, Pages 7-8). [See App.1457, ¶ 32-34]

10c. Further evidence that FROST, on behalf of himself, USCS, and other members of the Financial Task Force, acted with willfully, intentionally and maliciously is clear from the acts and conduct of the agents pertaining to Andrew A. Gantkessy. In his affidavit, Mr. Gantkessy states that,

> "In June 1993, I was working at my office in El Paso. I was informed that a US Customs officer was at the security door and wished to speak to me. He had not made a prior appointment and I assumed that one of our trucks might have had a problem crossing the bridge into the US from Mexico. When I went to the security door to meet the officer, I was confronted by five or six federal agents and one El Paso police officer. I was taken to a conference room in the building where all the agents started to interrogate me. I asked that my supervisor be allowed to come into the room but Larry Frost, who seemed to be in charge, denied my request.
>
> Frost started to question me in a very aggressive manner, sometimes shouting and using profanity.

Within a few minutes I became very upset and frightened. I asked permission to call my wife and to call an attorney. I was told that if I got out of the chair in which I was sitting, I would be arrested, handcuffed, and dragged out of the building in full view of the other employees. The agents continued to questioned me non-stop for several minutes about Mark and Debbie Rasmusson. They also accused me of accepting money and free transportation from the Rasmusson. They claimed that I had received up to $5,000.00 kickback for all flights booked with Rasmark Air Charter. This was not possible since most of the flights cost less than $5,000.00 total. For several minutes I denied all the accusations being made against me by the agents.

After a while I started to feel sick. I was under a Doctors care at the time being treated for a heart condition. I had triple by-pass heart surgery in 1987 and had a stroke in May 1990. I was afraid that I was about to have another heart attack. In order to get out of the room, I finally told the agents that I would agree to anything they said. Once I said that and stopped denying their accusations, I was allowed to leave the room. Any admissions I made during the last few minutes with the agents were made out of fear and intimidation and were not true. I was feeling sick and went directly home. Before the agents released me, I was ordered to report to the US Customs office on Viscount Blvd. The following day. I was told that if I failed to show up at the Customs office, I would be arrested.

The following day I went to the Customs office where I was met by Customs Agent Fred Schroeder and FBI Agent Joe Acosta ... I told him (Schroeder) that I was not aware of any illegal activities on the part of either Mark or Debbie or any employee of Rasmark Air Charter.

> Schroeder asked me if I would be willing to wear a "Wire" and record conversations with the Rasmusson. I told him that I would think about it and him an answer the next day. He also asked me to make a phone call from his office to Mark Rasmusson and allow him Schroeder, to record the call. He told me that he would tell me what to say. I refused to make the phone call. Before allowing me to leave the Customs office, Agent Schroeder again made threats against me, telling me that I would lose my job and to jail if I refused to cooperate with him and the other agents. He assured me that if I cooperated, nothing would happen to me," (see Affidavit of Andrew A. Gantkessy, Pages 1-3). [see also App. 3 Oct 96]

10d. On the following day GANTKESSY contacted his lawyer, Tony Silva, and told him what happened. Mr. Gantkessy wanted his advise about whether he should wire a wire. Mr. Silva instructed him to ref use to wear the wire and refuse to cooperate with any of the federal agents. Andrew GANTKESSEY states in his affidavit that "When I called Schroeder and told him that I would not wear the wire, he seemed very upset. He told me that I was making a big mistake and that he and the other agents would start "playing hardball", (see Affidavit of Andrew A. Gantkessy, Page 4) . [Aff 3 Oct 96]

10e. Subsequent to the interrogation of Andrew A. Gantkessy, three events occurred that further documents the fact that USCS acted willfully, intentionally, and maliciously. All the subsequent information was entered into the USCS official agencys system of records. These official USCS records documents that on or about July 26, 1993, FROST, on behalf of himself, USCS, and other members of the Financial Task Force, sent a poison pen letter to Ford Motor Company. In this letter USCS, signed by SAC LAPPE, the highest ranking agent in the El Paso Customs office, cites highly inflammatory and unsubstantiated allegations pertaining to Mr. Gantkessy and the Rasmussons. The letter refers to agents interrogation of GANTKESSY on June 2nd and 3rd of 1993, alleging GANTKESSY made admissions of kickbacks and payoffs. The letter referred to allegations of drug

smuggling and a conspiracy to defraud Ford by a scheme between GANTKESSY and the Rasmussons; allegations of false RASMARK invoices, and more. None of the inflammatory allegations were true. USCS knew, or should have known, from the Ford records already subpoenaed by the FBI documented no acts of criminal activity pertaining to either drug smuggling, money laundering, violations of the Bank Secrecy Act, mail fraud, kickback or payoff schemes or tax evasion. FROST in deposition of January 10, 1992 stated he had no analysis done of the Ford records. ACOSTA in his deposition of January 24, 1997 (see App.714) stated that he only briefly reviewed the Ford records and had no further analysis done on these records; he further stated that he gave a copy of these records FROST for the use the USCS and Financial Task Force.

10f. Further documentation of USCS willful, intentional and malicious acts and conduct is revealed in two meetings that occurred between Ford officials and the USCS. On August 18, 1993 and on September 24, 1993, FROST, SCHROEDER, and HOLLAND relayed highly inflammatory and false allegations to Ford officials, citing to Ford the alleged admissions of GANTKESSY made on June 2nd and 3rd of 1993, (see the Affidavits of Henry A. Webb and Edward H. Wagner for more details). [Wagner at App.1409, ¶ 11-23; Webb at App.1453, ¶ 16-18; ¶28-31; ¶37-52]

10g. Our expert witness, Edward Wagner, states that "The memorandum does not indicate that agent Schroeder or officer Holland ever sought to obtain any information or records from the Ford Motor Co. Officials, therefore the disclosures had no investigative purpose and are improper. Even if agent Schroeder and officer Holland had requested information the disclosures far exceed the Dept of Treasury standard and are both vindictive and malicious... Having reviewed the referenced disclosures and related documents, and based on my experience and training, the disclosures made to Ford Motor Company in the letter dated July 26, 1993... to the Ford officials during meetings on August 18, 1993 and September 24, 1993... and to William Cole ... far exceed the normal procedures and policies of Federal Law Enforcement agencies. In addition, many of the disclosures by agent Frost and the USCS had no investigative purpose and were made with

a vindictive and malicious purpose causing RASMARK to lose its contractual relationship with Ford Motor Company, and Andrew Gantkessy to lose his job and a major portion of his retirement with Ford Motor Co., (see Affidavit of Edward H. Wagner, Pages 5-6)[see App. 1404-1413].

10h. Our expert witness, Henry A. Webb, states in his affidavit, that based upon the other unprofessional actions of Agent Frost throughout the course of the Rasmark investigation, one can only assume that Agent Frosts motives in releasing the information were punitive and vindictive in nature. His frequent use of information which he knew or should have known was false and unreliable is a clear indication that he had no regard for the truth. The assumption that Agent Frost deliberately used false and misleading information in official investigative reports becomes a conclusion after one studies those facts and then compares them with other testimony.

10i. Agent Frosts testimony is directly contradicted on several occasions by that of FBI Agent Acosta. His, Agent Frosts testimony during his deposition is evasive at best. The reasons Agent Frost offered f or sending the "Poison pen" letter to Ford simply do not coincide with the facts supported by the testimony of Agent Acosta and the eventual facts developed the USCS Task Forces own investigation. It is noted that Agent Frost testified that he drafted the Ford letter which was signed by SAC Lappe. The letter was also read and approved by Michael Wilczewski, Agent Frosts USCS Supervisor and USCS Donnie Reay.

10j. I strongly believe that if the FBI reports of Agent Acosta and other supporting documentation not yet made available to Mr. Rasmussons attorney, are released by the court, the activities of Agent Frost will further indicate that he has lied under oath on several occasions...

10k. The Rasmark business which was thriving, expanding, and was on the threshold of landing a major national contract with Ford was virtually "shut down." Once all the company records were seized through the USCS Task Force search warrant, it was practically

impossible to operate ... The fact that the aircraft maintenance records required by FAA were held by Agent Frost for 14 months without any justification, further indicates to me Agent Frost was simply being vindictive. This was simply one more punitive, unjustified action on the part of Agent Frost. The fact that his supervisors at USCS, SAC Michael Lappe, ASAC Donnie Reay, and Group Supervisor Michael Wilczewski did not properly supervise his activities and did nothing to halt his outrageous conduct is an indictment of all those individuals in USCS who were responsible for his actions. The fact that USCS legal counsel for USCS would authorize the release of a letter such as that sent to Ford by SAC Lappe in July 1993 clearly indicates that all Agent Frosts unjustified, outrageous actions were supported by his supervisors and by the Agency itself...," (see Affidavit of Hank A. Webb, Pages 10-11)

10l. Moreover, evidence shows that between 1987 and 1990, Custom ports of entry throughout the United States and Canada were alerted to Rasmark aircraft which were searched, passengers strip searched, raid teams with guns holding Mark, Debra and Mark junior at gun point on several occasions. Evidence indicates that this treatment of Plaintiffs in the 1987-1990 period was brought about by Customs retaliation for Mark Rasmusson's exercise of his First Amendment right to organize professional pilots in El Paso and seek relief from Customs intolerable treatment during clearing Customs process at ports of entry. There is considerable evidence that Customs had a nationwide policy of taking retaliatory actions against anyone who complained about treatment by Customs including Customs employees and agents.

10m. Additionally, our expert witness, Mark Riden, a former Customs supervisor with considerable experience, states in his affidavit that "I know through my experience that you are not allowed to disclose case related information to non law enforcement persons or entities other than to secure information or records. The only provision I am aware of that allows an agent to disclose any information to a non law enforcement person or entity is an investigative disclosure to obtain information. The standard on investigative disclosures is to disclose only the minimum amount of information necessary to obtain the information required. In my twenty six and one-half years experience I

have never provided a non law enforcement entity or person a summary or synopsis of my case or one of my agents cases to obtain information or records," (see Affidavit of Mark Riden dated March 18, 1997). [See App.1471]

Therefore, based on the foregoing discussion, and expert witnesses opinions, of the USCS intimidation, harassment and retaliation, the inference is clear that all of the official USCS reports that were entered into the USCSs official system of records were a continuation of the willful, intentional and malicious acts and conduct of the USCS agents, in concert with other members of the Financial Task Force, that has been displayed repeatedly against all of the Plaintiffs.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that this Court will enter an Order granting Plaintiffs' motion to add the U. S. Customs Service as a defendant in this lawsuit.

Respectfully submitted,

SHEPPARD & ASSOCIATES

/s/ SANDRA JACKSON SHEPPARD
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(915) 778-5678 FAX
Lead Counsel for Plaintiffs

Filed May 6, 1997

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

MARK B. RASMUSSON, ET AL.,	§	
	§	
	§	CIVIL ACTION:
	§	EP-95-CA-475-F
vs.	§	JURY DEMAND
	§	
LAWRENCE E. FROST, ET AL,	§	
	§	
DEFENDANTS	§	

MOTION FOR HEARING

COME NOW PLAINTIFFS, Mark B. Rasmusson, et al., by and through their attorney Sandra J. Sheppard, of the firm of Sheppard & Associates, pursuant to Federal Rules of Civil Procedure move the Court to set a date to have a hearing on issues specified below:

This case spans ten years of actions by defendants against Plaintiffs. Plaintiffs raised several issues that were not fully addressed by the Court on April 21, 1997. Plaintiffs request of a hearing is for the purpose of addressing the following issues.

A. Resolve discovery issues such as the obstructive tactics of defendants in preventing testimony by Defendants on the alleged grounds of disclosure of grand jury material or proceedings, or disclosure of investigative technique or methods, matter alleged to be out side the scope of qualified immunity, and defendants claim ongoing investigation and other reasons defendants objected to Plaintiffs deposition questions.

B. Conduct a Franks hearing as to the lack of probable cause in the search warrant affidavits prepared by Defendant Frost.

WHEREFORE PREMISES CONSIDERED, Plaintiffs respectfully request that this Motion be granted so that in the interest of justice so that Plaintiffs will have a fair opportunity to present their case fully.

Respectively submitted,

SHEPPARD & ASSOCIATES

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Filed June 6, 1997

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

MARK B. RASMUSSON, ET AL,	§	
	§	
PLAINTIFFS	§	
	§	
	§	CIVIL ACTION:
	§	EP-95-CA-475-F
VS.	§	JURY DEMAND
	§	
LAWRENCE E. FROST, ET AL,	§	
	§	
DEFENDANTS	§	

PLAINTIFFS' REQUEST FOR AN ORAL HEARING

COME NOW PLAINTIFFS, Mark B. Rasmusson, et al., by and through their undersigned attorney of record and file Plaintiffs' Request For An Oral Hearing. In support, Plaintiffs show the Court the following:

1. Plaintiffs filed three motions for reconsideration and/or clarification of the Court's order of May 27, 1997 regarding (a) Plaintiffs' Opposition To Federal Defendants' Notice of Substitution and Application for Order Thereon; (b) Plaintiffs' Motion to Compel Production of all Records That are Defendants' Basis of Good Faith Before the Court and Basis For Objections to Deposition Questions Or Alternatively Produce for In Camera Review; (c) Plaintiffs Motion to Transfer Connected Case From Judge Furgeson's Docket To Chief Judge Hudspeth's Docket and other motions and briefs that raise substantial disputed issues of fact and issues of law regarding qualified immunity.

2. Plaintiffs requested the Court to hold oral hearings on the

issues raised in Plaintiffs' motions specified in item 1 above. However, Plaintiffs' motions were denied without the Court reaching the merits of any of Plaintiffs' motions and briefs.

WHEREFORE, Plaintiffs request the Court to hold an oral hearing on Plaintiffs' motions for reconsideration.

Respectively submitted,

SHEPPARD & ASSOCIATES

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State Bar No. 00786414

FILED May 16, 1997

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS,
EL PASO DIVISION

MARK B. RASMUSSON, ET AL,	§	
	§	
PLAINTIFFS	§	
	§	
	§	CIVIL ACTION:
	§	EP-95-CA-475-F
	§	
VS.	§	JURY DEMAND
	§	
LAWRENCE E. FROST, ET AL,	§	
	§	
DEFENDANTS	§	

MOTION FOR LEAVE TO FILE PLAINTIFFS' MOTION TO STAY PROCEEDINGS UNTIL SUCH TIME AS CHIEF JUDGE HUDSPETH HAS REVIEWED PLAINTIFFS' MOTION TO (1) STRIKE EVIDENCE (2) TRANSFER THE MATTER AS A CONNECTED CASE TO CHIEF JUDGE HUDSPETH'S DOCKET, OR IN THE ALTERNATIVE (3) TO ALLOW PLAINTIFFS TO AMEND THEIR WITNESS LIST AND OFFER ADDITIONAL EVIDENCE ON THE ISSUE OF QUALIFIED IMMUNITY

COME NOW PLAINTIFFS, Mark B. Rasmusson, et al., by and through their undersigned attorney of record and file their Motion For Leave To File Plaintiffs' Motion To Stay Proceedings Until Such Time As Chief Judge Hudspeth Has Reviewed Plaintiffs' Motion To (1) Strike Evidence (2) Transfer The Matter As A Connected Case To Chief Judge Hudspeth's Docket, Or In The Alternative (3) To Allow Plaintiffs To

Amend Their Witness List And Offer Additional Evidence On The Issue Of Qualified Immunity. In support, Plaintiffs show the court as follows:

1. "Defendants' Reply To Plaintiffs' Opposition To Motion Dismiss Or, In The Alternative, Motion For Summary Judgment And Defendants' Objections To the Appendices Filed in Support Of Plaintiffs' Reply" was filed on May 6, 1997 ("Defendants' Reply"). Defendants rely heavily upon facts from the investigation and trial of Jesus Flores.

2. Defendants' Reply, in essence, is requesting this Court to enter an Order that would effectively operate to reverse the findings of Chief Judge Hudspeth and his judgment of acquittal rendered in favor of Mark Rasmusson. In Plaintiffs' motion to transfer connected case, Plaintiffs are requesting this matter be transferred to Chief Judge Hudspeth because of his unique knowledge of his personal subjective thoughts behind the rulings which effectively invalidated or discredited the evidence adduced in the Flores trial which evidence is now being reasserted by Defendants. In Fact, Chief Judge Hudspeth is the only jurist who can adequately review the government's use of facts and his rationale when he considered those same facts to be insufficient to establish any criminal activity whatsoever, much less a criminal connection between Jesus Flores and Mark Rasmusson.

Therefore, in the interest of justice and fairness, Plaintiffs' motion for leave should be granted.

WHEREFORE PREMISES CONSIDERED, Plaintiffs respectfully request the Court to grant Plaintiffs' Motion For Leave To File Plaintiffs' Motion To Stay Proceedings Until Such Time As Chief Judge Hudspeth Has Reviewed Plaintiffs' Motion To (1) Strike Evidence (2) Transfer The Matter As a Connected Case To Chief Judge Hudspeth's Docket, Or In The Alternative (3) To Allow Plaintiff's To

Amend their Witness List And Offer Additional Evidence On The Issue Of Qualified Immunity.

Respectively submitted,

SHEPPARD & ASSOCIATES

/s/ SANDRA JACKSON SHEPPARD

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Attorney for Plaintiffs

FILED: MAY 16, 1997

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

MARK B. RASMUSSON, ET AL,	§	
	§	
PLAINTIFFS	§	
	§	
	§	
	§	CIVIL ACTION:
	§	EP-95-CA-475-F
VS.	§	JURY DEMAND
	§	
LAWRENCE E. FROST, ET AL,	§	
	§	
DEFENDANTS	§	

PLAINTIFFS' MOTION TO COMPEL PRODUCTION OF ALL RECORDS THAT ARE DEFENDANTS' BASIS OF GOOD FAITH BEFORE THE COURT AND BASIS FOR OBJECTIONS TO DEPOSITION QUESTIONS OR ALTERNATIVE PRODUCE FOR IN CAMERA REVIEW

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW, MARK B. RASMUSSON, DEBORAH L. RASMUSSON, ANDREW A. GANTKESSY, and RASMARK JET CHARTER, INC., Plaintiffs in the above styled and numbered cause, by and through their undersigned attorney of record, pursuant to Rules 34 and 37 of the Federal Rules of Civil Procedure submit their motion for production and discovery.

A. Plaintiffs request the Court to compel Defendants to produce all records that are the basis of Defendants' good faith before the Court;

B. Plaintiffs request the Court to compel Defendants to produce all records on which defendants rely to support their claim of privilege for each objection defendants asserted during deposition of each Defendant;

C. Plaintiffs request in the alternative that Defendants be compelled to produce all documents in categories items A and B above for inspection and review of the Court in camera. In support Plaintiffs show the Court as follows:

1. On March 19, 1997, the Court scheduled a hearing the purpose of which was not stated in the Courts' notice. However, at that hearing, the Court discussed the format of the hearing that was scheduled for April 21, 1997. The Court and all counsel agreed that the April 21 hearing format would be for each Defendant to present his/her case devoting an hour if necessary where the entire day was set aside for the hearing. Defendants would use the same procedure as used in conducting oral argument in a court of appeal.

2. However, on April 17, 1997, the Court sent a letter to each attorney of record changing the format of the April 21 hearing. The format was changed to a "question and answer session between the Court and Plaintiff attorney Ms. Sheppard ..." Although sent by FAX on April 17, 1997, the Court's notice changing the hearing format to questions and answers was not received by Plaintiffs' counsel until the next day, April 18, 1997 due to a phone line failure. This format turned out to be like a trial on each issue where the Court required Plaintiffs to produce proof that would ordinarily be reserved for trial. Plaintiffs were not prepared to undertake proving their case in the April 21 hearing nor should Plaintiffs been required to do so.

3. During the course of the hearing, the Court took the position of raising issues such as "good faith" on behalf of the Defendants' counsel. Plaintiffs attempted to demonstrate that the Defendants have not acted in good faith in carrying out their ten year investigation where no credible evidence of drug smuggling, money laundering, kickback scheme, mail fraud, bank secrecy act, and tax evasion. At the very least this Court should order defendants to produce any evidence they have

that would support their claim that Plaintiffs engaged in the offenses listed by Defendant Frost in his November 19, 1993, affidavits.

4. As another example of bad faith, Plaintiffs attempted show that Defendant Reay lied in his deposition regarding Defendant Reay's statement that the Rasmark investigation is part of Operation Transwestern. Defendant Reay's lies would go to the issue of unreasonable conduct and bad faith.

5. The Court raised the argument that there could be two Operation Transwesterns. One in Albuquerque and one in El Paso. And the Rasmark investigation could have been a part of the one in El Paso. Plaintiffs deposition questions to Defendant Reay on Operation Transwestern were met with objection of privilege based on going investigation. Plaintiffs know at the time Defendant of Reay's deposition testimony that customs had only one Operation Transwestern that was run out of the Albuquerque RAC office. Operation Transwestern was concluded when the targets were tried and convicted in 1990-1991. Plaintiffs have a considerable number documents pertaining to Operation Transwestern which were released from Customs files pursuant to an FOIA request in 1994-1995. When asked for the name of the Customs Group supervisor of Operation Transwestern, Defendant Reay became evasive and would not reveal Group Supervisor Ward Olson's name despite the fact that Defendant Reay knew from Plaintiff's prior Amended Complaints that Plaintiffs knew the name.

6. This tactic by Defendant Reay and his attorney could only be considered bad faith and obstructive.

7. All the information pertaining to good faith is in the hands of the Defendants.

8. This motion is designed to bring to the Court all documents relevant to the issue of Defendants good faith before the Court. Secondly absent production for Plaintiffs review, Plaintiffs request that the documents be produced for in camera review by this Court on the issue of good faith. In addition, Plaintiffs request that Defendants be

compelled to produce all records on which Defendants rely to support their claims of privilege or other objection to deposition questions. In the event that an appeal is taken the issues of bad faith and lack of basis to object to deposition questions can be reviewed on a full record. In particular, Defendants raise their claims of privilege based on the following specified categories of objections.

9. The Defendants claimed privilege and raised objections which are grouped into the following categories:

a. "ongoing investigation"

b. "investigative technique",

c. "Grand Jury" material or matters appearing before the grand jury

d. "Irrelevant To Qualified Immunity",

e. "Qverbroad" Question

f. "Confidentiality"

g. "Ongoing Investigation"

h. "Confidential Informant Information"

10. After the deposition of Defendant Frost, the level and scope of objections increased to the point where the deponents' attorney was engaging in testimony for his client. Plaintiffs objected to the defendant's attorney engaging in such testimony.

11. The objections entered by each deponents' attorney are listed as follows:

DEPOSITION OF LAWRENCE E. FROST

SECTION I

The following pages from Defendant Frost's deposition, as referenced by page and line number:

(1)Page 17, L8-25 (report pertaining abuse of authority by Frost);

(2)Page 21, L24 - Page 22, L8 (reports pertaining to EPIC search);

(3) Page 24, L13-23 (reporting pertaining to information from search EPIC, and other data bases, indicating Mark B. Rasmusson was engaged in or engaging in between June 1991 and March of 1992 drug smuggling or money laundering;

(4) Page 25, L17 - Page 26, L2 (USCS SA John Peterson case files pertaining to investigation of the Rasmussons and Rasmark between June 1991 and March 1992;

(5) Page 29, L14-19 (report and analysis pertaining to review of court records, property liens, tax liens, etc.);

(6) Page 33, L22-25 (grand jury subpoenas);

(7) Page 35, L25 - Page 36, L7 (information in case files pertaining to money laundering after criminal trial of Mark Rasmusson);

(8) Page 36, L17 - Page 37, L8 (OCDETF committee meeting to certify Rasmark);

(9) Page 45, L16 - Page 46, L25 (report on association between Saenz and Portillo and how connected to the Rasmussons and Rasmark Jet Charter, Inc.);

(10) Page 51, L16-21 (uncover operation pertaining to the Plaintiffs);

(11) Page 53, L1-9 (trash reports pertaining to Dale Douglas address);

(12) Page 53, L23 - Page 54, L6 (documentation on request to sanitation department and approval for trash pick ups);

(13) Page 56, L16 - Page 57, L3 (objection);

(14) Page 67, L15-18 (detailed written report pertaining to interrogation of Deborah Rasmusson);

(15) Page 68, L13-15 (copy of consent to search document presented to Deborah Rasmusson on May 23, 1992 at Customs offices);

(16) Page 73, L2-15 (report pertaining to submitting charges to U.S. Attorney's office and being declined);

(17) Page 74, L3-17 (report pertaining to document analysis of contents from box known as "2 of 18" unlawfully seized from Deborah Rasmusson on May 23, 1992);

(18) Page 75, L22 - Page 76, L9 (report pertaining to seizure of N7GP from a hangar in Houston to determine if any connection with Rasmark at that time);

(19) Page 78, L15-16 (report pertaining to statement from Portillo claiming he gave the airplane, N7GP, to the Rasmussons and Rasmark);

(20) Page 79, L3-22 (report from DEA and Customs pertaining to allegations that Mark Rasmusson was engaged in trafficking, associated with other narcotics organizations);

(21) Page 79, L23 - Page 80, L16 (reports of investigation of John Peterson who had developed the original cause and information and provided background information on the case against the Rasmussons and Rasmark and reports on corroboration of specific incidents--ongoing investigation);

(22) Page 81, L4 - Page 82, L23 (report pertaining to U.S. Attorney's office declining alleged wiretap charges against Mark

Rasmusson);

(23) Page 82, L24 - Page 83, L9 (reports pertaining to any wiretaps placed on any of the Plaintiffs' telephone currently and in past);

(24) Page 83, L10 - Page 84, L19 (Customs Service guidelines or policies and procedures pertaining to "investigative disclosures" to third parties other than law enforcement agencies);

(25) Page 86, L6 - Page 90, L18 (report from Customs' general counsel David Lindsey approving July 26, 1993 letter sent to Ford Motor Company and report on pending charges from ongoing investigation);

(26) Page 93, L23 - Page 94, L1 (report pertaining to Frost's contact with Lori Nelson, ex-wife of Mark Rasmusson, and with William Cole, Lori Nelson's attorney);

(27) Page 94, L19 - Page 95, L4 (copy of subpoena for Frost to appear at custody hearing by Lori Nelson);

(28) Page 97, L5 - Page 98, L19 (report showing basis of Gail Beach information that Mark Rasmusson permitted George Arnold to use his (Rasmark) Cessna 210 to smuggle and transport marijuana and report pertaining to source of Gail Beach's information about Arturo Tarby and Guillermo Portillo business relationship with Rasmark);

(29) Page 98, L21 - Page 102, L6 (reports pertaining to all "lookouts" placed on aircraft and vehicles of the Rasmussons and Rasmark by either John Peterson, Frost, or any other agent or agency);

(30) Page 103, L1 - Page 104, L10 (reports on all searches done of Rasmark aircraft performed by Custom agents other than members of the Financial Task Force);

(31) Page 105, L2-13 (report pertaining to decertification of Rasmark investigation as OCDETF case);

(34) Page 106, L3-21 (report on Frost's presentation to OCDETF Committee to get Rasmark investigation certified as OCDETF case);

(35) Page 107, L3-16 (report on Special Agent in Charge decertifying Rasmark investigation to U.S. Attorney's office);

(36) Page 111, L3 - Page 112, L116 (document analysis report of records from execution of search warrants on November 22, 1993);

(37) Page 112, L17 - Page 113, L13 (basis of Frost's appearance at Port of Entry on November 10, 1992 when Deborah Rasmusson was arrested for switchblade knife and car allegedly seized for .1 gram of marijuana;

(38) Page 116, L25 - Page 117, L14 (reports pertaining to when suspicion of Gantkessy's alleged criminal activity first developed);

(39) Page 117, L21 - Page 118, L14 (reports pertaining to other contact with Ford Motor Company's representatives prior to interrogation with Plaintiff Gantkessy);

(40) Page 119, L15 - Page 120, L22 (ongoing investigation);

(41)Page 121, L17 - Page 122, L4 (reports pertaining to analysis documents retrieved from trash pick ups);

(42) Page 125, L17 - Page 126, L4 (documentation of under reporting of income);

(43) Page 126, L23 - Page 127, L1 (report on document analysis of box seized on May 23, 1992 from Deborah Rasmusson);

(44) Page 128, L8-16 (documentation of "legal formality" that covers Sanitation Department);

(45) Page 131, L9-14 (pertaining to whether Deborah Rasmusson agreed to become confidential informant);

(46) Page 134, L3-10 (reports pertaining to taking heroin, cocaine and marijuana);

DEPOSITION OF THOMAS LENOX

SECTION II

The following pages from Defendant Lenox's deposition, as referenced by page and line number:

(1) Page 12, L20 - Page 14, L16 (reports pertaining information learned from various law enforcement data bases indicating criminal activity on part of any of Plaintiffs pertaining to drug smuggling, money laundering, violations of Bank Secrecy Act, mail fraud, kickback schemes, or tax evasion);

(2) Page 16, L3 - Page 17, L1 (reports pertaining to any allegations of money laundering of $500,000 in proceeds from Jesus Flores, transporting currency);

(3) Page 17, L8-13 (reports pertaining to money laundering through purchasing aircraft parts);

(4)Page 17, L25 - Page 18, L6 (reports pertaining to "lookouts" placed on aircraft and vehicles of Rasmussons and Rasmark by DEA OCDETF Task Force);

(5) Page 19, L2-16 (reports showing basis of making Mark B. Rasmusson target of DEA OCDETF Task Force);

(6) Page 19, L17-24 (reports of any witnesses who failed to testify at criminal trial against Mark Rasmusson);

(7) Page 20, L11 - Page 24, L1 (reports pertaining to any document analysis of financial records subpoenaed by DEA from Albert Apodoca, Rasmark accountant in 1990);

(8) Page 24, L8 - Page 25, L12 (reports pertaining to any

ongoing investigation of Mark B. Rasmusson, Deborah Rasmusson or Rasmark);

(9) Page 25, L16 - Page 26, L1 (reports pertaining to any evidence Mark Rasmusson participating in money laundering activities between June 14, 1991 and March 1992);

(10) Page 28, L6-16 (reports on any connection between Jesus Flores and Mark B. Rasmusson in 1989);

(11) Page 29, L4-12 (reports showing IRS already had parallel investigation against the Rasmussons and Rasmark);

(12) Page 37, L2 - Page 39, L17 (reports pertaining independent corroboration of Rasmark transporting Colombian pilots or controlled substance for Jesus Flores);

DEPOSITION OF GEORGE L. SALAS

SECTION III

The following pages from Defendant Salas' deposition, as referenced by page and line number:

(1) Page 21, L3-9 (EPPD police report and disposition of tape);

(2) Page 31, L23 - Page 32, L9 (records pertaining to off-duty employment for Gregory Peck and others, not including the Rasmussons);

(3) Page 45, L6-14 (reporting pertaining to harassment complaint against Deborah Rasmusson);

DEPOSITION OF FONDA HIVICK

SECTION IV

The following pages from Defendant Hivick's deposition, as referenced by page and line number:

(1) Page 21, L16-24 (IRS case files pertaining to any previous or parallel investigations of the Rasmussons and Rasmark from 1987-present);

(2) Page 38, L7-18 (any document analysis of the Rasmussonsor Rasmark or Andrew Gantkessy, tax returns for period from 1987 through present);

(3) Page 49, L5-20 (AUSA Robinson directed Hivick not to answer question pertaining to connection between Guillermo Portillo and the investigation against the Rasmussons and Rasmark);

(4) Page 63, L10-24 (AUSA refusing to let witness answer question pertaining to connection between Portillo and Mark Rasmusson and whether Portillo was the alleged "larger money laundering investigation");

(5) Page 64, L1-21 (reports pertaining to investigation of other charters services as part of the larger money laundering "air transport initiative");

DEPOSITION OF FRED SCHROEDER

SECTION V

The following pages from Defendant Schroeder's deposition, as referenced by page and line number:

(1) Page 16, L12 - Page 17, L14 (using investigative technique as basis for not answering questions);

(2) Page 20, L24 - Page 21, L3 (all reports pertaining to interviews of Albert Apodoca and copies of any statements);

(3) Page 28, L24 - Page 29, L18 (using "ongoing investigation" as basis for not answering question pertaining to whether any property of the Rasmussons or Rasmark Jet Charter proceeds of drug smuggling or money laundering);

(4) Page 30, L9-22 (refusing to testify regarding USCS interviews with any informants that testified at Flores and Rasmusson's criminal trial);

(5) Page 35, L2-10 (using "investigative technique" to avoid question pertaining to surveillance of Rasmussons' home at 11157 Leo Collins Drive, El Paso, Tex.);

(6) Page 36, L11-25 (chain of custody of evidence, reports and location of evidence);

(7) Page 37, L3-16 (report to AUSA for prosecution based on items from trash);

(8) Page 38, L24 - Page 39, L4 (using "investigative technique" to avoid answering question);

(9) Page 44, L17-21 (objection to answering question pertaining to "Lookouts" placed on aircraft of Rasmark);

(10) Page 45, L14-24 (refusing to testify pertaining to any information put into TECS system pertaining to Rasmark aircraft);

(11)Page 45, L25 - Page 46, L14 (reports pertaining to interviews of Bobby Joe Leonard and Mark McAllister);

(12) Page 65, L18 - Page 66, L10 (produce all written letters of request to Sanitation Department);

(13) Page 81, L7-16 (report of interview with Bob Hunter

pertaining to alleged payoffs between Rasmussons and Gantkessy);

(14) Page 91, L11-23 (produce pieces of paper seized during execution of search warrants that corroborate kickback schemes between Gantkessy and the Rasmussons);

DEPOSITION OF JAMES HOLLAND

SECTION VI

The following pages from Defendant Holland's deposition, as referenced by page and line number:

(1) Page 12, L20 - Page 13, L20 (witness not permitted to testify about the alleged larger investigation which Rasmark was supposed to be a part of);

(2) Page 16, L13-19 (records pertaining salary paid by OCDETF or HIDTA funding);

(3) Page 59, L1 - Page 61, L3 (witness counsel refused to permit answer to question pertaining to surveillance activities of the Rasmark business);

(4) Page 64, L14-22 (after counsel conferred with witness outside of deposition, witness claims no knowledge to question);

(5) Page 65, L7-25 (produce reports pertaining to Customs aircraft used in investigation against the Plaintiffs);

(6) Page 67, L1 - Page 68, L4 (produce report showing when investigation ended against the Plaintiffs);

(7) Page 88, L17 - Page 89, L12 (witness counsel refused to let witness testify to connection between Guillermo Portillo and the investigation against the Plaintiffs);

DEPOSITION OF ERIC MILLS

SECTION VII

The following pages from Defendant Mills' deposition, as referenced by page and line number:

(1) Page 26, L12 - Page 27, L21 (witness not allowed to answer question pertaining to Guillermo Portillo and "investigative technique");

(2) Page 29, L17 - Page 30, L20 (witness not allowed to answer question pertaining to surveillance activities that he coordinated for the Task Force);

(3) Page 35, L5-12 (witness not allowed to answer question based on "Investigative technique");

DEPOSITION OF JOE L. ACOSTA

SECTION VIII

The following pages from Defendant Acosta's deposition, as referenced by page and line number:

(1) Page 17, L19 - Page 18, L7 (witness not allowed to testify on how case got started against the Plaintiffs);

(2) Page 18, L8-14 (witness not allowed to testify about alleged connection between Guillermo Portillo and the Plaintiffs);

(3) Page 20, L9 - Page 21, L1 (AUSA objects to Plaintiffs' use of the term "Rasmark case" while not allowing witnesses to testify to other individuals who were the main target of the investigation);

(4) Page 23, L4 - Page 26, L7 (witness not allowed to testify concerning decertification of the "Rasmark portion of the OCDETF");

(5) Page 29, L10-21 (AUSA coaching witness);

(6) Page 38, L14 - Page 39, L25 (witness testified he subpoena Plaintiffs' bank records);

(7) Page 45, L10 - Page 46, L23 (AUSA coaching witness and need documentation Grand Jury interview);

(8) Page 46, L24 - Page 47, L8 (grand jury objection);

(9) Page 55, L11 - Page 56, L16 (AUSA coaching witness);

(10)Page 62, L12 - Page 63, L3 (AUSA coaching witness and testifying for witness);

(11) Page 68, L10 - Page 72, L22 (coaching witness and obstructing deposition);

(12) Page 74, L5-21 (confidential information objection);

(13) Page 77, L9-22 (confidential information objection);

(14) Page 77, L24 - Page 78, L18 (grand jury objection);

(15) Page 78, L19 - Page 79, L4 (grand jury objection);

(16) Page 99, L11-14 (grand jury objection);

DEPOSITION OF DONALD REAY

SECTION IX

The following pages from Defendant Reay's deposition, as referenced by page and line number:

(1) Page 24, L4-14 (investigative technique);

(2) Page 26, L19 - Page 27, L4 (coaching witness);

(3) Page 43, L7 - Page 50, L23 (relevance and investigative technique);

(4) Page 76, L3-8 (coaching witness);

(5) Page 90, L2 - Page 91, L8 (pending investigation; irrelevant to qualified immunity);

(6) Page 91, L22-24 (investigative technique);

(7) Page 96, L22 - Page 97, L23 (investigative technique);

(8) Page 101, L21 - Page 102, L7 (investigative technique and irrelevant to issue of qualified immunity);

(9) Page 108, L17 - Page 112, L22 (irrelevant to issue of qualified immunity);

(10) Page 112, Page 23 - Page 113, L23 (obstructing deposition with frivolous questions);

(11) Page 115, L7-12 (irrelevant to issue of qualified immunity);

DEPOSITION OF MICHAEL WILCZEWSKI

SECTION X

The following pages from Defendant Wilczewski's deposition, as referenced by page and line number:

(1) Page 23, L24 - Page 24, L25 ("...I can't answer your question..."); page 25, L11-22 (evasive answer);

(2) Page 37, L16 - Page 38, L13 (investigative technique and irrelevant to issue of qualified immunity);

(3) Page 82, L22 - Page 84, L25 (potential investigative

techniques and irrelevant to issue of qualified immunity);

(4) Page 87, L23 - Page 89, 12 (evasive answer);

(5) Page 103, L5-10 (evasive answer);

(6) Page 108, L14-19 (evasive answer);

DEPOSITION OF NEIL AARON BAKER

SECTION XI

The following pages from Defendant Baker's deposition, as referenced by page and line number:

(1) Page 20, L5 - Page 21, L10 (grand jury privilege and investigative privilege);

(2) Page 21, L24 - Page 22, L9 (grand jury privilege and investigative privilege);

(3) Page 23, L20 - Page 24, L1 (investigative techniques);

(4) Page 27, L9-19 (grand jury privilege)

(5) Page 29, L7-19 (confidential informants);

(6) Page 30, L5 - Page 31, L4 (confidential informant);

(7) Page 32, L3 - Page 33, L1 (confidential informant);

(8) Page 50, L21 - Page 51, L2 (investigative privilege);

(9) Page 52, L4-14 (grand jury privilege or investigative privilege);

(10) Page 64, L9 - Page 66, L2 (investigative information and investigative technique);

(11) Page 66, L3-10 (ongoing investigation);

(12) Page 69, L9 - Page 72, L25) (outside scope of qualified immunity);

DEPOSITION OF GAIL BEACH

SECTION XII

The following pages from Defendant Beach's deposition, as referenced by page and line number:

(1) Page 21, L14 - Page 22, L10 (irrelevant to issue of qualified immunity);

(2) Page 22, L11 - Page 23, L3 (outside scope of discovery for purposes of these proceedings);

(3) Page 23, L4 - Page 24, L10 (beyond issue of qualified immunity);

(4) Page 29, L8 - Page 30, L2 (beyond scope of discovery as to qualified immunity);

(5) Page 31, L22 - Page 32, L11 (beyond scope of discovery as to qualified immunity);

(6)Page 32, L12 - Page 33, L7 (beyond scope of qualified immunity);

(7) Page 36, L19 - Page 39, L10 (out of the scope of relevant time period);

(8) Page 42, L13 - Page 43, L22 (irrelevant to issue of qualified immunity);

(9) Page 50, L8 - Page 51, L10 (beyond scope of discovery of qualified immunity)

(10) Page 51, L11 - Page 52, L6 (beyond scope of limited discovery);

(11) Page 52, L15 - Page 53, L14 (that question is wrong)

(12) Page 53, L15-22 (beyond scope of discovery);

(13) Page 53, L23 - Page 54, L4 (coaching witness);

WHEREFORE PREMISES CONSIDERED, Plaintiffs respectfully request the Court to grant "Plaintiffs' Motion To Compel Production Of All Records That Are Defendants' Basis Of Good Faith before The Court And Basis For Objections To Deposition Questions Or alternative Produce For In Camera Review".

Respectively submitted,

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Received May 7, 1997
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**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

MARK B. RASMUSSON, ET AL,	§	
	§	
VS.	§	CIVIL ACTION:
	§	EP-95-CA-475-F
LAWRENCE E. FROST, ET AL,	§	
	§	JURY DEMAND
DEFENDANTS	§	

BRIEF ON LAW IN SUPPORT OF PLAINTIFFS' FRANK'S CHALLENGE TO FROST'S AFFIDAVITS OF NOVEMBER 19, 1993 BASED ON COLLATERAL ESTOPPEL

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW, MARK B. RASMUSSON, DEBORAH L. RASMUSSON, ANDREW A. GANTKESSY, and RASMARK JET CHARTER, INC., Plaintiffs in the above styled and numbered cause, by and through their undersigned attorney of record, and submit their Brief in Support of Plaintiffs' Opposition to Qualified Immunity and as grounds would show the Court as follows:

STATEMENT OF RELEVANT FACTS

1.

On September 19, 1990, Mark B. Rasmusson was indicted, along with Jesus Flores, in Count Nine of Superceding Indictment, Criminal Number EP-90-258H.

2.

Count Nine alleges:

> "'Jesus Armando Flores, did use and cause to be used a facility in interstate or foreign commerce, that is, an airplane, from the City of El Paso in the State of Texas, to the Cities of Orlando and Miami in the State of Florida and divers other places, with the intent to promote, manage, establish, and carry on, and to facilitate the promotion, management, establishment, and carrying on of an unlawful activity, being Conspiracy to possess with intent to distribute a controlled substance, to wit: cocaine, in violation of 21 U.S.C. § § 846 and 841(a)(1), and thereafter did perform and attempt to perform acts to promote, manage, establish, and carry on, and to facilitate the promotion, management, establishment, and carrying on of said unlawful activity all in violation of 18 U.S.C. §§ 1952(a)(3) and
>
> 2. That Defendant, Mark Rasmussen [sic], aided, abetted, counseled, induced and procured the commission of the offense alleged above, in violation of Title 18, United States Code, Section 2."

3.

The foundation of the Government's case against Mark Rasmusson was the DEA's investigation as reported through the DEA Reports of Investigation (DEA-61s) and the testimony of witnesses whose alleged statements were reported in the DEA-6's.

4.

Statements pertaining to the use of Rasmark charter services by Flores, or his associates, were reported in the DEA-6 consisting of the

post arrest statements of Luis A. Garcia. See Appendix E, Exhibit 7, Paragraph 11.c-i.

5.

Statements pertaining to the use of Rasmark charter services by Flores, or his associates, were reported in the DEA-6 consisting of the Debriefing of Peter Seaverns. See Appendix E, Exhibit 9, Paragraph 12 and Exhibit 16 following DEA-6 interview of Mark and Debra Rasmusson, DEA-6, Paragraphs 9-11 and 17).

6.

The Court made a favorable ruling for Rasmusson. The Court states:

> [t]he elements of that offense are: first, that the defendant, whichever the defendant was, used a facility in interstate or foreign commerce; second, that it was used with the intent to promote, manage, carry on etcetera, the illegal activity, specifically conspiracy to possess drugs with intent to distribute; and third, that thereafter the defendant performed or attempted to perform acts which did promote, establish, manage and carry on, etcetera, the illegal enterprise. The fault I can see in the proof on that count is not all of this talk about who had knowledge of what when, but just there's not sufficient proof that those trips, suspicious as they might be, were for those purposes or that thereafter those acts were performed. Suspicion, of course, is not enough. The test is proof beyond a reasonable doubt. So the motions for acquittal by the two defendants named in Count Nine will be granted. That count will be removed from the jury's consideration...

See Appendix F, Vol. II, Exhibit 61.

7.

Defendant Frost, in the present case, states in his two affidavits dated November 19, 1993 that he reviewed all of the DEA Reports of Investigation and the criminal trial transcript as part of his preparation of his affidavits in support of probable cause to obtain the search warrants.

ARGUMENT AND AUTHORITIES

8.

The question presented is whether the issues of evidentiary and ultimate facts in the dea-6's were either fully prosecuted, or could be deemed fully prosecuted, in the government's case in chief against Mark B. Rasmusson as basis for judgment of acquittal such that the principle of collateral estoppel should apply to prevent these evidentiary and ultimate facts from being used again in affidavits for search warrants leading to subsequent criminal prosecution.

The United States Supreme Court rules on the issue of "'collateral estoppel" in *Ashe v. Swenson*, 397 U.S. 436 (1970). The facts in *Ashe* concern a defendant (three or four men robbed six poker players; in the first trial, the victims were unable to identify the defendant) who the jury found not guilty due to insufficient evidence; in a second prosecution, after denial of defendant's motion for dismissal based on acquittal, defendant was tried for having robbed another poker player and was convicted. In the second trial, the witnesses were for the most part the same, but this time their testimony was substantially stronger on the issue of the defendant's identity, resulting in a conviction. In *Ashe*, the witnesses refined their testimony against the defendant, giving more details of their description of him. The similarity between the Ashe case and the present case is the use by Defendant Frost of the same issues of ultimate facts that are contained in the DEA-6's and the criminal trial transcript, that were the basis of the previous prosecution, in his two affidavits of November 19, 1993 to give the appearance of probable cause to launch a subsequent prosecution. An

additional similarity to Ashe is Defendant Frost's attempt to make stronger the criminal nexus by attributing to the DEA-6's numerous misrepresentations and fabrications that are not supported in any part of the DEA6's or the criminal trial transcript.

9.

To determine issues of Ultimate Facts, the present Court must "examine the record of a prior proceeding, taking into account the pleadings, evidence, charge, and other relevant matter, and conclude whether a rational jury could have grounded its verdict upon an issue other than that which the defendant seeks to foreclose from consideration." Id., at 444.

10.

In reviewing Count Nine of the Superceding Indictment, the following issues of ultimate facts are alleged: that Mark Rasmusson used Rasmark aircraft in interstate or foreign commerce for the purpose of aiding, abetting, counseling, inducing and procuring the promotion, management, establishment, and carrying on of Jesus Flores conspiracy to poss ess and distribute cocaine from the City of El Paso in the State of Texas, to the Cities of Orlando and Miami in the state of Florida and divers other places.

11.

Comparing Count Nine with what Defendant Frost alleges in his two affidavits, it becomes quite obvious that drug smuggling and money laundering are among the specified unlawful activities being alleged by Frost. For example:

(1) In Paragraph 122 Frost alleges,

> Based on the statements made by witnesses such as Rasmark Jet Charter office staff, documentary evidence found in the residental trash, as well as Debra

> Rasmusson's statements to DEA Special Agents regarding maintaining records at her home and my experience which indicates that persons engaged in money laundering and currency manipulation violations, I believe that there are accurate records of unlawful transactions kept by these persons in various formats and in what they believe to be safe locations such as their home and businesses.

(2) In Paragraph 124 Frost alleges,

> I believed [sic] that based on the statements of Debra Rasmusson and the association of the Rasmussons with known controlled substances traffickers such as Jesus Flores and Hector Barrera there is probable cause to believe that the Rasmussons have in the past and are utilizing Rasmark Jet Charter to facilitate the transportation and laundering of the proceeds in trafficking in controlled substances;

(3) In Paragraph 127 Frost alleges "[t]he Mail Fraud allegations as well as trafficking in controlled substances are "specified unlawful activities' as defined in Title 18 United States Code section 1956."

12.

An examination of the DEA-6's reveals that the reported statements pertaining to the Rasmussons and Rasmark relate to drug smuggling activities:

(1) One example is in Appendix E, Exhibit 7, Paragraph 11e, SA Perkins reports that Luis Garcia said Jesus Flores, Arturo Bermudez and Mike Villalba arrived at Rasmark Jet Charter, Inc., and met with Joe Peake and the

> Colombian male in the airplane hangar area. . * * f. Both pilots seemed to know Joe Peake and called him

> by his first name . . . . The Colombian male did not say much during the flight and Peake said that the Colombian was nervous because he was illegally in the United States . . . the Colombian, and the two pilots had two rooms approximately three floors below Garcia's room . . . According to Garcia, they flew out of Miami at about 2:00 PM . . . Peake and Garcia were picked up at Rasmark Jet Charter, Inc., by Peter Seaverns and Gerd Schmidt . . .

13.

(2) Another example is in Appendix E, Exhibit 16, (the DEA-6 following the DEA-6 Interview of Mark and Debra Rasmusson) regarding Debriefing of Peter Seaverns on August 29, 1990, Paragraph 10, Seaverns reportedly said, "[t]hat he told Mark Rasmussen, [sic] 'you'd better be careful if you're flying Jesse and his people around'. Seaverns was once asked by Mark and Debbie Rasmussen about Flores being a doper. Seaverns said he told them indirectly that Flores was a doper but Rasmussen was 'hiding his head in the sand.'"

14.

The trial testimony further demonstrates that the ultimate issues that are in the DEA-6's were either fully prosecuted by the Government, or should be deemed fully prosecuted. For example, DEA SA Perkins testified to going to Rasmark on August 23, 1990, that he met with Debra Rasmusson and Mark Rasmusson, that he asked for any records and documents and any information he could give concerning flights taken by Flor es or his people or his associates. See Appendix F, Vol. I, Exhibit 41, Page 718, L12 - Page 719, L25. Perkins further testified to the one telephone call made by Flores to Rasmark, out of thousands of telephone calls that were monitored by the Government wiretaps. See Appendix F, Vol. II, Exhibit 43, Page 762, L8 - Page 763, L19).

15.

In further support of the Plaintiffs' position, the criminal trial transcript reveals that the remaining Government witnesses in its case in chief against Mark Rasmusson also made alleged statements to DEA SA Perkins and were reported in the DEA-6's. They were: (1) Jim Edward Young, former Rasmark pilot (Appendix E, Exhibit 15); (2) Deborah Rasmusson, wife, employee, and coowner of Rasmark (Appendix E, Exhibits 8, 15, 16); (3) Jerry Burnett, former Rasmark pilot (Appendix E, Exhibit 13; (4)Albert Apodoca, Certified Public Accountant who did Rasmark taxes and other financial work (Appendix E, Exhibit 14); (5) David Chavez, former Rasmark dispatcher (Appendix E, Exhibit 10); and (6) Suzanne Zaldivar, former Rasmark employee (Exhibits 12, 17). Coconspirator Peter Seaverns also testified; however, he was not asked any questions pertaining to his reported statements in the DEA-6's, the Rasmussons or Rasmark (Appendix E, Exhibits 9, 11, 16).

16.

With regard to evidentiary facts, the Court in *Wingate v. Wainwright*, 464 F.2d 209, 215 (5 th Cir. 1972) expanded the principle of collateral estoppel to include evidentiary as well as ultimate facts because

> [i]t is fundamentally unfair and totally incongruous with our basic concepts of justice to permit the sovereign to offer proof that a defendant committed a specific crime which a jury of that sovereign has concluded he did not commit. Otherwise a person could never remove himself from the blight and suspicious aura which surround an accusation that he is guilty of a specific crime.

A review of the two Frost's affidavits of November 19, 1993 would reveal the evidentiary facts that he uses from the DEA-6's are the same evidentiary facts that the Government used in its prosecution against Mark Rasmusson.

17.

In Paragraph 10 Frost begins to incorporate evidentiary facts from the DEA-6's into his affidavit. First, he refers to SA Perkins' reported statements of Debra Rasmusson from the interrogation on August 23, 1990: (1) Perkins asked Debra Rasmusson if she knew that Jesus Flores was a controlled substance trafficker, Debra Rasmusson reportedly stated that she thought Flores was a "'hit man"; that Flores always paid in cash; that they took Flores all over the country; Flores seldom took luggage; Rasmark never transported freight for Flores; sometimes Flores would send Joe Peake to pay the bill in cash; that original documents were at home; and so (for DEA-6 see Appendix E, Exhibit 8, Paragraphs 3-5). The evidentiary fact that Perkins is attempting to establish is "knowledge" on the part of the Rasmussons of Flores' criminal activity, and the Government attempted to prove this element of "knowledge" at the criminal trial. However, the Court rejected the Government's position and stated "The fault I can see in the proof on that count [9] is not all of this talk about who had knowledge of what when, but just there's not sufficient proof that those trips, suspicious as they might be, were for those purposes or that thereafter those acts were performed. See Appendix F, Vol. 11, Exhibit 61.

18.

Further support for the Plaintiffs' position that Frost uses the same evidentiary facts already prosecuted is found in Paragraphs 11-12, 14-16, where Frost reviews the DEA Administrative Subpoena issued to Rasmark on August 24, 1990 (Appendix E, Exhibit 12); Frost raises the issues of Deborah Rasmusson being unable to locate Rasmark copy of Flores' invoices and the reconstructed invoices. For the DEA-6's pertaining to Deborah Rasmusson see Appendix E, Exhibits 8, 15, 16. The Government called Deborah Rasmusson as a witness and examined her fully pertaining to the missing invoices, pilot duty time sheets, manifests, and the subsequent reconstructed invoices (Appendix F, Vol. II, Exhibits 46-47). Not only was the Government trying to prove "knowledge" but also the issue of "participation" by the Rasmussons in promoting or otherwise aiding, abetting, counseling or protecting Flores'

organization. Of course, the Court rejected the Government's evidence, as shown above in Paragraph 19.

19.

In Paragraphs 13, 17 of Frost's affidavits, Frost refers to the DEA-6 pertaining to Susana Zaldivar on the keeping of Rasmark files and invoicing procedures. For the DEA-61s pertaining to Zaldivar, see Appendix E, Exhibit 17. Likewise, Zaldivar testified at the criminal trial on the same issues (Appendix F, Vol. II, Exhibit 54).

20.

Frost continues, in Paragraphs 18-20 of his two affidavits, with Jerry Burnett, a former Rasmark pilot who also testified at the criminal trial. Frost alleges: that Burnett was the chief pilot since mid 1989; that he was interviewed by DEA on August 26, 1990; that he had been the pilot on at least three Flores flights chartered into Mexico; that on one occasion they picked up additional passengers in Mexico and that these people were armed with rifles and semi-automatic handguns who he believed were the Mexican Judicial Police; that he went to Mark and Debra [sic] Rasmusson and reported unusual events of flight into Mexico with Flores; that Mark and Debra Rasmusson and Burnett concluded that Flores was in the illegal drug business; that he, Burnett, had several conversations with the Rasmussons regarding Flores and "his people" being in the drug business and that both Mark and Debra Rasmusson told him Burnett, that they knew that Flores was in the drug business and so on. For the DEA-61s pertaining to Burnett, see Appendix E, Exhibits 13, 16. The Government called Burnett as a Government witness and examined him fully on each flight that he did for Flores and on what occurred during the flights (Appendix F, Vol. II, Exhibits 48-49). Obviously, "knowledge" and "participation" were the evidentiary facts the Government was attempting to prove; however, the Court rejected their proof (see Paragraph 19 above).

21.

Frost continues his review of the DEA-6's, in Paragraphs 21-22 and 24, with the report pertaining to the accounting firm of Apodoca and Jensen who performed all of the accounting functions, including taxes. Frost states that Apodaca [sic] told Perkins that Mark Rasmusson came to Apodaca and said he wished to amend his May, 1990 financial report to include $11,000.00 cash transaction; that Apodaca was alarmed by Mark Rasmusson's statements and requests to him; and so on (for DEA-6 see Appendix E, Exhibit 14). The Government also called Albert Apodoca as a Government witness and examined him fully (Appendix F, Vol II., Exhibits 50-51). Again, the evidentiary fact of "knowledge" of and "participation" in Flores' organization were the aim of the Government's proof which failed (see Paragraph 19 above).

22.

Lastly, Frost sneaks in Paragraph 26 a statement that Mark Rasmusson was introduced to Jesus Flores by Peter Seaverns. No where in the DEA-6's is this statement supported; however, there were statements showing the use of Rasmark charter services. For the DEA-6's pertaining to Seaverns, see Appendix E, Exhibits 9, 11, 16 (following the DEA-6 interview of Mark and Deborah Rasmusson and Jerry Burnett). To further cement the Plaintiffs' position, Peter Seaverns, a co-conspirator of Flores, did testify during the criminal trial and the Government chose not to question him on the incriminating statements allegedly made about the Rasmussons and Rasmark, and these evidentiary facts should be deemed prosecuted. See Appendix F, Vol. I, Exhibit 19.

23.

It is without question that Defendant Frost, and his co-conspirators, were attempting to bring about another criminal prosecution against either of the Rasmussons and Rasmark. The Supreme Court has always recognized a distinction between governmental action intended to punish and that which is not. See

United States v. Halper, 490 U.S. 435, 446-448 (1989)r holding that Double Jeopardy Clause is implicated when a civil fine is punitive. Defendant Frost simply sought to use the DEA6's to create an appearance of a criminal nexus where there is none. The Government tried to do the same thing during the criminal prosecution against Mark Rasmusson in 1990-1991. The Court emphatically stated that "[t]he fault I can see in the proof on that count [9] is not all of this talk about who had knowledge of what when, but just there's not sufficient proof that those trips, suspicious as they might be, were for those purposes or that thereafter those acts were performed. Suspicion, of course, is not enough. The test is proof beyond a reasonable doubt . . . ."

CONCLUSION

24.

The Plaintiffs have demonstrated that the evidentiary and ultimate facts in the DEA-61s were either fully prosecuted, or should be deemed fully prosecuted, through the Government witnesses, all current and former Rasmark employees except for DEA SA Perkins and Albert Apodoca, Rasmark accountant. The principle of collateral estoppel should apply because the Government should not be permitted to make repeated attempts to convict or indict from use of discredited facts and no independent evidence of any criminal nexus pertaining to the Plaintiffs outside of the discredited facts, thereby subjecting the Plaintiffs to unending embarrassment, expense and ordeal and compelling them to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though they are innocent they may be found guilty.

Moreover, at the very least Frost should have stated in his affidavits that the information that he relied upon in the DEA6's was completely discredited by witnesses testimony in the criminal prosecution of Mark Rasmusson. Frost improperly misled the Magistrate into believing that there existed a criminal connection or association between Mark Rasmusson and Jesus Flores. This inference was completely discredited at the criminal trial of Mark Rasmusson.

WHEREFORE, the Plaintiffs have demonstrated that the question whether the issues, of evidentiary and ultimate facts in the DEA-6's that were either fully prosecuted, or could be deemed fully prosecuted fully prosecuted, in the Government's case in chief against Mark B. Rasmusson, as a basis for the Judgment of Acquittal, should be answered in the affirmative for the Plaintiffs. Therefore, Plaintiffs request the principle of collateral estoppel be applied to all of the evidentiary and ultimate facts that are contained in the DEA-61s, criminal trial transcripts and any other documents related to the criminal prosecution of Mark B. Rasmusson in 1990-1991.

Respectfully submitted,

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Filed June 10, 1997

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

MARK B. RASMUSSON, ET AL,	§	
	§	
PLAINTIFFS	§	
	§	
	§	CIVIL ACTION:
	§	EP-95-CA-475-F
VS.	§	JURY DEMAND
	§	
LAWRENCE E. FROST, ET AL,	§	
	§	
DEFENDANTS	§	

MOTION FOR NEW TRIAL AND BRIEF

COME NOW PLAINTIFFS, Mark B. Rasmusson, et al., by and through their undersigned attorney of record and pursuant to Rule 59 of the Federal Rules of Civil Procedure file their Motion For New Trial. In support, Plaintiffs show the court as follows:

INTRODUCTION

1. On May 27, 1997, the Court filed its Memorandum Opinion and Order ("MEMO") dismissing Plaintiffs' claims "en toto". Plaintiffs object to the Courts' MEMO implied Findings of Fact and Conclusions of Law[1]

Fn 1. In Douglass v. United States Auto. Ass'n, 79 F.3d 1415 (5th Cir.1996) en banc revisited its standard for review of motion for new trial based on manifest injustice and plain error. The court overruled its former holding in Nettles v. Wainwright, 677 F.2d 404 (5th Cir.1982)(en

MANIFEST ERROR OF FACT

2. The Court states:

> The complaint in this action reads more like a script for an Oliver Stone movie than a suit for civil damages[2].

3. Although Plaintiffs object to the application of the heightened pleading standard, Plaintiffs have complied with this the standard as announced in Elloitt v. Perez[3]. The U.S. Supreme Court partially overruled *Elliott*[4] heightened pleading standard as to municipalities in Leatherman v. Tarrant county Narcotics Intelligence and Coordination Unit[5]. The Court states:

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banc) approving a waiver rule applied to unobjected-to proposed factual findings and legal conclusions but only applicable to factual findings as a forfeiture of the right to raise any objection on appeal to such factual findings for which no objection was entered in the district court. In Hardin v. Wainwright, 678 f.2d 589, 591 (5th Cir.1982) stated: "[the failure to object *no longer waives* the right to appeal but simply limits the scope of appellate review of factual findings to plain error review; no limitation of the review of legal conclusions results". The court in *Douglass* overruled the forfeiture rule applied in *Nettles* and its progeny and held that a party's failure to file written objections within 10 days shall bar that party from attacking on appeal the unobjected-to factual findings and legal conclusions provided that the party was served with notice that such consequences will result from failure to object. (Footnote omitted) Id. At 1428-1429.

FN 2. MEMO at p.2

FN 3. Elliott v. Perez, 751 f.2d 1472, 1480-82 (5th Cir. 1985)

FN 4. Leatherman v. Tarrant County Narcotics Intelligence And Coordination Unit, 113 S. Ct. 1160 (1993).

FN 5. 113 S. Ct. 1160 (1993)

> Loud cries of "conspiracy and cover-up" reverberate throughout hundreds of pages of allegations. Accused of wrongdoing is a legion of law enforcement officers, from the top brass in our nation's capital to the foot soldiers working the beat day in and day out, all allegedly ensnared in a conspiracy web so broad that the court is left to wonder how and why so many could and would have conspired so long to harm so few[6].

4. The Court states:

> Nonetheless, the court has been patient with Plaintiffs, giving them every opportunity to show, somewhere in the vastness of their presentation, that some kind of cognizable action does exist. No showing has been forthcoming; thus, for the reasons stated herein, Plaintiffs' claims are dismissed *en toto*[7].

5. Plaintiffs requested 45 days within which to complete and file their Third Amended Complaint. The Court granted Plaintiffs only 30 days for reasons not specified in the Court's Order. Within the 30 day period, Plaintiffs could only complete a draft of the Third Amended Complaint which was filed timely. Plaintiffs attempted to correct errors and more specifically bring into focus Plaintiffs allegations and specific facts supporting Plaintiffs' claims for relief. However, due to a

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FN 6. MEMO at p.2 Indeed, Plaintiffs have asked this question requesting Defendants during depositions to reveal the facts that led to Defendants' decision to conduct an investigation of Plaintiffs in the first place. That high level customs officials engaged in a cover-up and a directed a conspiracy against Plaintiffs should be no surprise given the propensity of Customs managers to lie to senators, or to steal files from the GAO office which was investigating Customs, or where the Clinton Transition team proposed that Customs be completely dismantled because it was beyond any possibility of accountability or control.

FN 7. MEMO at p.2

misunderstanding, Plaintiffs did not file a motion for leave of the Court to file the corrected Complaint and the Court admonished Plaintiffs' Counsel and ordered the corrected Third Amended Complaint struck. Therefore, the Court cannot reasonably claim that it gave Plaintiffs every opportunity to establish facts that show they are entitled to the relief requested. Despite these circumstances, Plaintiffs Third Amended Amended Complaint states more than enough facts which if proved at trial would establish that Plaintiffs are entitled to relief.

6. In the language of the Court:

> To fully understand the issues at hand, one must travel back in time to the turn of this decade. The place is El Paso, Texas; the time, circa 1989. A drug enforcement task force came into existence. When and how is not particularly relevant to the case at hand. Its objective was to investigate drug trafficking and money laundering between the United States and Mexico. The focus of this task force quickly became Jesus Flores, a Mexican national residing in El Paso, and his associates. Flores, who owned a remodeling business in El Paso, was suspected of running a large scale drug operation[8].

7. Plaintiffs agree that it is essential to review the facts that were known to Defendants going back to 1987. However, only incidents of harassment of Plaintiffs was by customs inspectors prior to 1989. In 1989 Mark Rasmusson came to the attention of Acting Customs Commissioner Mark Lane[9].

8. The Court states:

FN 8. MEMO at pp.2-3.

FN 9. Appendix D Volume I Exhibit 6H letter from Michael H. Lane to Senator Lloyd Bensten regarding Mark and Deborah Rasmusson.

> As the investigation progressed, task force members became aware that Flores was relying on Rasmark Jet Charter, Inc., a charter company owned by Plaintiffs Mark and Debra Rasmusson, for his transportation needs. Rasmark, and both Rasmussons, naturally became targets of the investigation, albeit never its primary targets.

9. The Court mischaracterizes the facts by implying to the reader that Rasmark was the only air transportation company useD by Flores. Nowhere in the evidence at Mark Rasmusson's trial did any informant, federal agent or anyone else testify that Flores relied on Rasmark for his "transportation needs"[10].

> As the Plaintiffs tell it, they became the subjects of around the clock harassment by the Customs Service. Their planes were constantly being searched, even when no international flights were made, and their pilots constantly questioned and harassed.

10. This statement by the Court is a complete and gross misstatement of the facts. Prior to March, 1992, Rasmark aircraft were intensely searched by Customs inspectors or agents at port of entries on every occasion that Rasmark Aircraft had to return from foreign a country[11]. While it is true that Rasmark aircraft were constantly being searched and their pilots were constantly questioned and harassed when returning from foreign countries, it is not true that prior to March, 1992, that their planes were constantly being searched when "no international flights were made...". Plaintiffs allege two warrant-less searches of their aircraft prior to March, 1992. In 1988, Rasmark pilot Jerry Burnett was stopped in Brownsville, Texas at gunpoint and detained for several

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FN 10. United States v. Jesus Flores et al., EP-90-CR-258-H.

FN 11. See Appendix A Exhibits 6, 6A through 6H which specifies the Rasmussons' complaints to senators and to Customs officials regarding Customs inspectors "Gestapo tactics".

hours while federal agents searched his aircraft without a warrant. Again in 1990, Mr. Burnett was detained by federal agents when he landed in El Paso[12].

11. The Court States:

> The Rasmussons are under the misimpression that the FF began its investigative activities of them and of Rasmark in 1990. That is not the case. The Task Force conducting the Flores investigation was not the same Task Force in charge of investigating the Rasmussons. Although both Task Forces were certified as Organized Crime/Drug Enforcement Task Forces, the FTF came into existence in March 1992.

12. Plaintiffs were never under any misimpression regarding the various task forces referred to by the Court. Plaintiffs discovered that during the period that the DEA Task Force was investigating Flores and Plaintiffs that a parallel investigation by Customs agent Peterson was being conducted[13]. It is interesting to note that Defendant Schroeder was assigned as Customs representative to the DEA task Force in the period 1985-1991. Defendant Schroeder states in his Deposition that he was in charge of the Rasmark portion of the larger money laundering investigation[14]. Defendant Frost admitted that the larger money laundering investigation was directed at Guillermo Portillo[15]. Defendant Frost stated in his deposition that Mark Rasmusson and Rasmark were targeted because an informant alleged that Mark Rasmusson knew a

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FN 12. See Plaintiffs' Third Amended Complaint paragraphs 36-45.

FN 13. See Deposition of Defendant Frost at pp.18-19.

FN 14. See deposition of Defendant Schroeder at pp.14-15
Also see Deposition of Defendant Lenox at pp. 40.

FN 15. See Deposition of Defendant Frost at pp.18-19.

person who knew a person who was close to Mr. Portillo[16]. None of the twelve individuals deposed could point to a single incident or any evidence that Plaintiffs committed any crime or were about to commit a crime[17]. Although the basis of the Portillo investigation is an important issue as to whether Defendant were entitled to qualified immunity, every attorney for the Defendants objected strongly regarding any questions by Plaintiffs Counsel regarding Mr. Portillo[18]. Defendant Frost conclusion that Mark Rasmusson is associated with Hector Saenz in a money laundering scheme is complete fantasy. There is no direct or circumstantial evidence that would connect Mark Rasmusson to criminal activity by Flores or any of his associates. This is the exact reason that Judge Hudspeth acquitted Mark Rasmusson because the government and Defendant Frost failed to establish any direct or

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See footnote 19.

FN 17. See Frost Deposition pp.18-20, 81-82, 111-112; Lenox Deposition pp.16-17; Salas Deposition p.84; Hivick Deposition pp.15-16,25-29,43-45; Schroeder Deposition pp.28-29, 25-27; Holland Deposition pp.28, 30, 52, 41, 60, 90; Mills Deposition pp.90-91; Acosta Deposition pp.93-95; Reay Deposition pp.115-119; Wilczewski Deposition pp.90-93,111; Baker Deposition pp.26,42-43,46-50,53-55, 58-60; Beach Deposition pp.41-43.

FN 18. An FBI source allegedly stated Pete Seaverns introduced Jesus Flores to Mark Rasmusson. Flores was involved in money laundering with Hector Saenz-See Frost Deposition at p.43 lines 7-19. The FBI source alleged to have stated that Mark Rasmusson was buying aircraft parts with proceeds from trafficking and controlled substances. Id. p.43 lines 13-16. (These allegations of Mark Rasmusson money laundering for Flores were completely discredited at the witness testimony during Flores trial.) Defendant Frost states he has circumstantial evidence that Mark Rasmusson associates with Hector Saenz. Id. P.45 lines 11-15. Defendant Frost states the Hector Saenz is associated with Guillermo Portillo Corral who has a business association with Mark Rasmusson. Id. P.45 at lines 18-22. For typical objection see Acosta Deposition at p.18 l.8-18.

circumstantial evidence that Mark Rasmusson engaged in any criminal activity with Flores or with Hector Saenz, or with Guillermo Portillo[19].

13. The Court refers to focus of the FTF as created for the purpose of investigating large scale money laundering operations in the El Paso Juarez area[20]. However, the Court again completely misstates the facts. The Court states:

> Here, too, the Task Force became aware that Rasmark was providing transportation services to members of that organization, and began investigating Rasmark and the Rasmussons for possible connections[21].

14. The Court refers to "members of that organization". The Court does not name Portillo. Presumably the Court is referring to Portillo because all of the Flores criminals are in jail and Mark Rasmusson could not possibly provide any "transportation services" for any of them. The true facts are that Mr. Portillo owned a Lear Jet aircraft identified as N7GP. Mr. Portillo contracted for Rasmark to provide aircraft maintenance, two pilots, hanger space and Rasmark would use Mr. Portillo's aircraft for charter trips and pay Mr. Portillo an agreed to amount per air mile. However, Mr. Portillo failed to pay certain maintenance bills and Mark Rasmusson filed a lien against the aircraft in excess of $50,000.00. Mr. Portillo eventually paid off the lien and recovered his $4,000,000.00 aircraft[22].

15. The Court states:

FN 19. Id. p.46-47.

FN 20. MEMO at p.4

FN 21. Id.at p.4

FN 22. See Appendix DI Exhibits 11A through 11D. Plaintiffs' Third Amended Complaint at paragraphs 188-195.

> The investigation of Rasmark and the Rasmussons consisted of undercover surveillance work, interviewing former and current employees, interviewing the Rasmussons, conducting searches pursuant to search warrants, and requesting records from customers employing Rasmark[23].
>
> While circumstantial evidence linking the Rasmussons to the money laundering scheme was obtained[24], no charges were ever brought, and the Task Force was decertified as an Organized Crime/Drug Enforcement Task Force sometime in 1994[25].

16. The Court appears to be including investigation interviews from the Flores case as part of its basis for the above statements. No circumstantial evidence was developed by the FTF nor by Defendants that connected Mark Rasmusson to any criminal activity what so ever[26].

17. The Court states:

FN 23. During the period March, 1992, through December, 1993, Mark Rasmusson was never interviewed by any federal agent(s). Agents interviewed Deborah Rasmusson in May, 1992. See Plaintiffs' Third Amended Complaint paragraphs 199-248. Agents attempted to interview Deborah Rasmusson in November, 1992, after the agents seized her vehicle without a warrant. See Id. Paragraphs 263-270.

FN 24. The Court's reliance on Defendant Frost's statements regarding circumstantial evidence of money laundering is unjustified. As previously shown in footnote 18, Mark Rasmusson merely knowing or having a business relationship with Mr. Portillo is not any evidence what so ever that Mark Rasmusson was engaged in money laundering with Hector Saenz.

FN 25. MEMO at p.4.

FN 26. See footnote 18.

> Although the complaint reads as though each Plaintiff asserts each claim against various Defendants, that is not, in fact, the case[27].

18. The Court states:

> First, Plaintiffs allege that all Defendants except for Hallett, Weise, Hensley, Samaniego and Leach have conspired to deprive them of their constitutional rights under the First, Fourth, Fifth and Fourteenth Amendments[28].

19. On April 21, 1997, the Court held a hearing on the issue of defendants' motions for qualified immunity. The original format was to be in the form of oral argument as in a case before a court of appeals. However, the Judge changed the format a few days prior to the hearing. The Court stated that format would be for the Court to ask question directed at Plaintiffs' counsel. However, instead of each defendant's attorney meeting their burden and stating their position on the legal issues, Judge Furgeson proceeded to conduct a bench trial of the case. Judge Furgeson made factual determinations as to credibility of evidence, credibility of affidavits, and required Plaintiffs to come forward with evidence as if he was conducting a trial on the merits. In summary judgment proceeding, the judge is suppose to accept all non-moving party's evidence, affidavits and allegations as true. Judge

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FN 27. It is Plaintiffs intention that each Plaintiff asserts each claim against specific defendants as noted in Plaintiffs' several causes of action in their Third Amended Complaint.

FN 28. Plaintiffs inadvertently omitted the names of Hallett, Weise, and Hensley from the conspiracy alleged in Count I of Plaintiff's Third Amended Complaint. Facts supporting Plaintiffs' conspiracy theory are in Plaintiffs' Third Amended Complaint paragraphs 365 through 395 and documents in support of these paragraphs are in Appendix B Exhibits 1 through 20. However, in Plaintiffs' Count VIII Defendants Hallett, Weise and Hensley are named as co-conspirators.

Furgeson did not make this assumption. Judge Furgeson was suppose to address only legal issues at the hearing and reserve factual determinations for the jury. On several occasions, Judge Furgeson took the position of acting as attorney for the Defendants. For example, Counsel attempted to present her evidence that Defendant Reay lied in his Deposition testimony regarding Operation Transwestern. Judge Furgeson responded as if he were Defendants' counsel. He advanced the theory that there could have been two Operation Transwesterns - one in El Paso and one in Albuquerque. Nowhere in any document or in any Defendant affidavit did anyone state there were two operations named Transwestern[29]. Defendant Lappe's memorandum on Desk Audit of Ward Olson is dated April 16, 1992. This date is a month after the FTF was formed. Judge Furgeson requested Counsel produce proof regarding operation Transwestern. Had the Court informed Plaintiffs' Counsel that proof was going to be required, Counsel would have brought proof. For example, Operation Transwestern was the subject of several newspaper

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FN 29. Operation Transwestern was so named because it involved the use of an airstrip at Mountainair, NM near Albuquerque, NM owned by the Transwestern Gas transmission company. Group Supervisor Ward Olson was in charge of this operation. Mr. Olson became a whistleblower regarding illegal conduct of Michael Lappe the SAC. Mr. Olson provided Plaintiffs with a copy of his Office of Inspector General investigation file and copies of numerous letters and memorandum regarding complaints to Senators, Treasury OIG investigators, and Customs Internal Affairs which were obtained through the Freedom of Information Act prior to the date Plaintiffs filed their original petition. Among Mr Olsons documents was evidence that SAC Lappe violated federal law in transferring money from Operation Transwestern to a "money 'aundering investigation in El Paso". It was on this issue that Defendant Reay lied in his Deposition when he testified that Rasmark case was adopted as part of the Transwestern case. See Reay Deposition at pp.43-51, 105 at l.14, 116-118. See Supplemental Appendix DI Exhibit 45 Memorandum from Michael Lappe to Director, Office of Domestic Operations dated April 16, 1992. Nowhere does the name Mark Rasmusson, Deborah Rasmusson or Rasmark Jet Charter appear.

articles in 1990 and 1991. Attached hereto is a copy of a newspaper article that appeared in the Albuquerque Journal on October 24, 1995. See Exhibit 1 attached hereto[30].

> Oral argument on all outstanding motions was heard by the court in El Paso on April 21, 1997. What became clear at the April 21st hearing is that the Plaintiffs, in essence, are complaining of being the targets of a criminal investigation that failed to produce evidence of indictable wrongdoing. Their complaint is that the investigation took too long and resulted in the loss of business and employment[31].

20. As noted above, the April 21, 1997, hearing was not in oral argument format. Plaintiffs complain that the ten year investigation of Plaintiffs was unconstitutional by virtue of its scope, intensity and use of unconstitutional investigation techniques such as search and seizure

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FN 30. A copy of Exhibit 1 is Exhibit 14 in Plaintiffs' Second Amended Complaint Received by the Clerk on May 3, 1996. Had Plaintiffs been informed that the April 21, 1997, hearing was going to be a bench trial instead of oral argument on issues of law, Plaintiffs would have brought evidence supporting each of Plaintiffs claims against each individual defendant. Also see Appendix B Exhibit 3 the next to the last page which is a news article which contains Defendant Hallett's response to FBI Director Sessions admission that Defendant Lappe lied to reporters at a news conference pertaining to Operation Transwestern. The last page in Exhibit 3 is Exhibit 1 pages 17-18 attached hereto. Also see Appendix G Exhibit 7 which is the first Declaration of Defendant Reay which contains three paragraphs admitting Op Transwestern was closed, funds were transferred from Op Transwestern for "per diem expenses". The Rasmark case was completely unrelated to Op Transwestern which was an international cocaine smuggling sting operation not an "air transport initiative".

Fn 31. MEMO at p.7

without a warrant[32].

> Because the court considered various affidavits in coming to a decision, all motions to dismiss will be construed as motions for summary judgment[33].

21. The Court has not applied the correct legal standard for its view of Plaintiffs' Complaint, affidavits, and pleadings[34].

> Having considered all motions, oral argument, and relevant case law, the court is of the opinion that no genuine issues of material fact exist as to any of the claims asserted and that all named Defendants are entitled to summary judgment as a matter of law[35].

THE COURT HAS FAILED TO APPLY THE PROPER LEGAL STANDARD WHICH HAS CAUSED A MANIFEST INJUSTICE AGAINST PLAINTIFFS:

22. The Court delves into the case law pertaining to summary judgment and to qualified immunity throughout the MEMO pages 8 through 30 but does not tie any of the specifics to the Plaintiffs' or Defendants' pleadings, affidavits, depositions, admissions or any other evidence offered by either Plaintiffs or Defendants. The Court's MEMO has failed to meet the legal standard for reviewing Plaintiffs pleadings,

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FN 32. See Complaint pars.306-324; 67-86.

FN 33. MEMO at pp.7-8

FN 34. See footnote 36.

FN 35. MEMO at p.8. Nor does the Court state that it views the evidence on Plaintiffs as true and proceed to analyze whether summary judgment is proper based on that assumption.

affidavits, depositions, and complaint allegations as if true as a starting point in its analysis of defendants entitlement to summary judgment[36].

23. In the Court's MEMO p.7, the Court refers to Plaintiffs' reliance on 42 U.S.C. Section 1985 to state a cause of action for conspiracy. The only problem with the Court's analysis is that Plaintiffs did not invoke section 1985. Instead Plaintiffs allege a conspiracy pursuant to section 1983[37].

24. In ruling on Plaintiffs conspiracy claim, the Court's MEMO does not consider Plaintiffs continuing violation theory which specifically tolls the statute of limitations until such time as the violation is discovered. Defendants continued to unjustifiably retain Plaintiffs property for 18 months after it was taken.

25. The Court did not enter any finding on Plaintiffs motion to oppose Defendant Notice of Substitution. As Plaintiffs pointed out in their pleadings, the Federal Tort Claim Act does not preclude an action under the Bivens doctrine. Both can be asserted in the same lawsuit. Constitutional Torts under Bivens are specifically excluded as being actionable under the FTCA[38].

FN 36. In ruling on a motion for summary judgment, courts must view the evidence of the non-moving party as true and all doubts will be resolved in favor of the non-moving party. Likewise, all evidence will be construed in the light most favorable to the non-moving party and all reasonable inferences will be drawn in the non-moving party's favor. Eastman Kodak Co v Image Technical Services, Inc., 504 U.S. 451, 456 (1992); Matsushita Electric Industries, Co. V. Zenith Radio, 475 U.S. 574, 585-587 (1986); Pfannstiel v. City of Marion, 918 F.2d 1178, 1183 (5th Cir.1990).

FN 37. See Pfannstiel v. City of Marion, 918 F.2d at 1187.

FN 38. See MEMO at pp.31-40; Plaintiffs' Opposition To Federal Defendants' Notice Of Substitution and Application for Order Thereon. The Court made no analysis of Plaintiffs' Opposition to which Plaintiffs

26. The Court's MEMO engages in a discussion of Plaintiffs' assertion of Constitutional deprivations of rights[39]. The MEMO Asserts that there is no causal connection between the Lappe letter to Ford and the termination of Gantkessy, and the termination of Ford's business relations with Rasmark. However, the Court failed to note that it specifically prohibited Plaintiffs from engaging in any course of discovery that would have revealed the causal connection. Plaintiffs alleged that the Lappe letter violated clearly established federal law as enacted in the Privacy Act[40] and violated due process and equal protection under the Fifth and Fourteenth Amendments.

27. The Court's MEMO regarding deprivations of Plaintiffs' Constitutional rights does not assume they are true then proceed to show any evidence offered by Defendants that would undermine Plaintiffs' claims. The Court states "[t]here is no evidence in the record that the termination of the relationship between the banks had anything to do with any visit by a federal agent..." This is not a correct statement[41].

28. Plaintiffs object to the Court's characterization that "At the hearing on the various motions, it became evidence that Plaintiffs have

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have filed a motion for reconsideration on this issue.

FN 39. MEMO at pp.41-50.

FN 40. Plaintiffs filed a separate appeal on the Privacy Act issue where the Court Denied Plaintiffs motion to add the U.S. Customs Service as a proper party. See Appendix DII Exhibit 20 which is a copy of the Lappe letter dated July 26, 1993.

FN 41. See Appendix DI Exhibit 9 where Texas Commerce Bank stated that termination of relations is based on "Past or ongoing investigations of borrower by regulatory agencies." Additionally see Appendix DII Exhibit 20A which is a copy of Ford memorandum pertaining to meeting between Ford executives and Defendant Schroder. Agent Schroeder is advising Ford as to how to proceed in the event Gantkessy sues Ford.

a fundamental misunderstanding of the right to association protected by the First Amendment"[42]. The Court required Plaintiffs to present evidence which Plaintiffs were not prepared to do at the hearing nor should Plaintiffs be required to present evidence where only issues of law should have been considered and oral argument on issues of law received by the Court.

29. The Court's statement "Plaintiffs complain of the execution of the November 22, 1993 search warrants and the collecting of trash from the Rasmusson residence." Plaintiffs have repeatedly complained that the November 22, searches were conducted without probable cause, that Defendants knew they had no probable cause on which to base a search warrant application, and the defendants retrieval of trash from the trash cabana attached to the residence required a search warrant[43]. Plaintiffs requested a hearing on these issues and the Court abused its discretion in failing to hear arguments of counsel which would have assisted the Court in making a just determination. The Court's failure to hear these arguments operated as a manifest injustice affecting Plaintiffs substantial rights.

30. The Court's MEMO states, "All three Defendants (Hallett, Weise, and Hensley) have sworn under penalty of perjury, that they have no personal knowledge of the facts at hand.[44]" Plaintiffs dispute the Courts Statement. Considerable evidence was adduced by plaintiffs that show a strong implication that Defendants Hallett, Weise and Hensley knew or should have known about the actions by Customs agents against Plaintiffs. Considering that these high level Customs managers had to approve the investigation and allocate funds to carry out the investigation it is reasonable to conclude these executives knew

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FN 42. MEMO at p.41.

FN 43. See Plaintiffs Brief in support of Frank's challenge to Frost's affidavits dated May 6, 1997; Also see Plaintiffs' Opposition to Federal Defendant Reply filed May 6, 1997.

FN 44. See MEMO p.51.

exactly what Defendants were doing. In the case of the seizure of a Rasmark Jet in Dallas on June 16, 1993, there had to be intervention by high level Customs officials to obtain the cooperation of multi federal agencies that participated in the seizure and search of the aircraft without a warrant[45].

PLAINTIFFS DISPUTE COURT'S CONCLUSIONS

31. THE COURT'S RULING THAT PLAINTIFF, RASMARK JET CHARTER, INC., CANNOT MAINTAIN A CLAIM UNDER EITHER BIVENS OR § 1983 OR BIVENS IS CLEAR ERROR OF LAW.

By its terms § 1983 authorizes the assertion of a claim for relief by "any citizen of the United States or other person within the jurisdiction thereof..." Whether a litigant is a citizen or other person authorized to assert a claim for relief under § 1983 depends upon the meaning and intent of the statutory language. Businesses are "other persons" authorized to assert claims under § 1983.[46]

32. THE COURT'S RULING THAT THE PLAINTIFFS HAVE FAILED TO STATE A CLAIM UNDER THE FIRST AMENDMENT IS CLEAR ERROR OF LAW.

A fair reading of the plaintiffs complaint shows Plaintiffs Mark B. Rasmusson, Deborah L. Rasmusson and Rasmark Jet Charter, Inc. began complaining about harassment from the government and unreasonable searches and seizures as far back as 1989 and culminating in the filing of their lawsuit on November 21, 1995. Clearly, the

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FN 45. See Appendix DII Exhibit 14; Appendix B Exhibits 1 through 20; FOOTNOTE 9.

FN 46. San Bernardino Physician's Servs. Medical Group v. San Bernardino, 825 F.2d 1404, 1407 (9th Cir. 1987) (corporation is person within meaning of due process clause and § 1983)

Rasmussons and Rasmark actively particiated in forming the complaint committee in May 1989, along with other pilots, to specifically to complain about the Customs inspectors. When the harassment and unreasonable searches and seizures continued subsequent to that meeting, the Rasmussons, and Rasmark, complained to Edward Kennedy, a U. S. Senator, who forwarded the complaint to the Senate Finance Subcommittee over Customs. The Subcommittee through Senator Bentsen forward the complaint to Customs Headquarters in Washington, D.C., causing the Commissioner's office to investigate and respond. Furthermore, the Rasmussons sent their complaint to the District Director's Office in El Paso, Texas, causing the District Director to respond. Subsequent to these complaints, the harassment and unreasonable searches and seizures against the Rasmussons and Rasmark accelerated, culminating in the filing of the present lawsuit. Plaintiffs are essentially alleging that because of these initial complaints against the federal government Customs Service, the Rasmussons and Rasmark were unfairly targeted for continuous investigation in retaliation for exercising their First Amendment rights in opposing the treatment they received from the Customs Service. The Defendants were acting under color of federal, and later both federal and state, law; the plaintiffs' complaints were protected under the first amendment; and the plaintiffs' exercise of their protected right was a substantial or motivating factor for defendant's actions. See Rolf v. City of San Antonio, 77 F.3d 823, 827.

32. THE COURT'S RULING THAT THE PLAINTIFFS HAVE FAILED TO STATE A CLAIM UNDER THE FOURTH AMENDMENT IS CLEAR ERROR OF LAW.

Material factual disputes exist. First, Defendant Salas testified that subsequent to the May 23, 1992 incident that he met Deborah Rasmusson for the purpose of returning her house keys to her. See Deposition of George Salas, January 10, 1997, Page 79, L3-12. This testimony conflicts with Salas' earlier testimony where he testified that Deborah Rasmusson never gave her keys to him for the purpose of borrowing her Mercedes. Deborah Rasmusson states in her affidavit

that her key chain included all of her house keys: master bedroom, office keys, filing cabinet keys, safe key, keys for her Grand Marquis car. She further states that it was after the occasion of Salas borrowing her car that she began noticing unusual happenings in both her home and office. See Deposition of George Salas, January 10, 1997, Page 38, L3-7. See Affidavit of Deborah Rasmusson, Plaintiffs' Supplemental Appendix C1, Page 5, Paragraph 17.

At all times in question pertaining to the trash pick ups at the Rasmussons residence located at 11157 Leo Collins, El Paso, Texas, the Sanitation Department collected the trash by coming upon the property of the Rasmussons to retrieve the trash from a "cabana", a permanent fixture attached to the residence; not from curbside. See Plaintiffs' Third Amended Complaint filed March 14, 1997, Paragraph 302. The Court states in its ruling that "several of the Defendants who were involved in trash pickups affied that they kept their eye on the trash from the moment it was picked-up until it was handed off." See Memorandum Opinion and Order, Page 44, Section B. Fourth Amendment. However, Defendant Holland in his affidavit states that "I picked up the residential trash at 11157 Leo Collins, El Paso, Texas on May 13, 1993, June 17, 1993, and on June 28, 1993." See Affidavit of James Holland, dated July 8, 1996, page 2. Holland further testified that the Rasmusson's home is located in a horseshoe configuration and that he waited around the corner, from which location it would not be possible to see the sanitation worker collecting and segregating the garbage. See Deposition of James Holland, January 17, 1997, Page 27, L1-21. Defendant Baker testified that "I observed them picking it [trash] up. It never fleft my sight." See Deposition of Neil Aaron Baker, January 31, 1997, Page 34, L3-7. However, Baker impeached his own testimony later when he said "Sometimes it [trash] came in a garbage bag. Sometimes we would provide the sanitation department garbage bags so that it would be placed in the garbage. The would - we'd meet them at a location and they'd give it to us" See Deposition of Neil Aaron Baker, January 31, 1997, Page 38, L2-7. Therefore, a material factual dispute exists as to whether the defendants went within the curtilage of the property to retrieve trash from the cabana.

33. Moreover, the Court has summarily ignored the Plaintiffs' "Cross Index of Constitutional Violations in Plaintiffs' Third Amended Complaint" which identifies 29 Fourth Amendment violations beginning on or about October 6, 1988 and continuing through May of 1995, when the Rasmussons and Rasmark forced Defendant Frost to return all of the records unlawfully seized on November 19, 1993. The cross index demonstrates that each violation from the first occurred within the two-year statute of limitation of the preceding violation, supporting plaintiffs' continuing violation allegations.

34. THE COURT'S RULING THAT THE PLAINTIFFS HAVE FAILED TO STATE A CLAIM UNDER THE FIFTH AMENDMENT IS CLEAR ERROR OF LAW.

A fair reading of the Plaintiffs' complaint would show that by Defendant Lappe, unknown to the Plaintiffs until April of 1996, entering highly inflammatory and false information into the agency's system of records and from the agency's system of records, composing and sending the highly inflammatory letter of July 26, 1993 to Ford Motor Company and by Defendant Frost procuring the subsequent highly inflammatory meetings between himself, federal Defendant Schroeder, state Defendant Holland and key officials of Ford Motor Company on August 18th and September 24th violated the Plaintiffs' due process and equal protection of the laws as protected by the Fifth and Fourteenth Amendments of the Constitution. The Privacy Act is relevant "other federal law". The congressional findings in support of the Act indicate the breadth of Congressional purpose: "1.2.1. The privacy of an individual is directly affected by the collection, maintenance, use and dissemination of personal information by Federal agencies; . . . 1.2.3. The opportunities for an individual to secure employment, insurance, and credit, and his right to due process, and other legal protections are endangered by the misuse of certain information systems; 1.2.4. The right to privacy is a personal and fundamental right protected by the Constitution of the United States; and 1.2.5 In order to protect the privacy of individuals identified in information systems maintained by Federal agencies, it is necessary and

proper for the Congress to regulate the collection, maintenance, use, and dissemination of information by such agencies."

35. To accomplish those purposes the Privacy Act provides: "1.3.1. Restrictions on disclosure, and redisclosure, of personally identifiable records; 1.3.2. 'Fair information practices' which required affected agencies to comply with statutory norms for the collection, maintenance, and dissemination of records; 1.3.3. A system for access by individuals to records about themselves, with exceptions; 1.3.4 A system for amendment of records about individuals upon a showing that they are not accurate, relevant, timely, or complete." Clearly, a violation of due process occurred when the Defendants disclosed highly inflammatory information after they knew that such information was false. Defendant Acosta testified that he personally had his FBI counterpart in Detroit, Michigan to subpoena all of the Ford Motor Company records relating to the use of Plaintiff Rasmark Jet Charter, Inc. Defendant Acosta testified that he informed Defendant Frost before he subpoened the records, which was served on Ford in or about January of 1993. The purpose of subpoenaing the records, according to Acosta, was ". . . to get an idea what kind of volume, what kind of money was being generated. And then I made a copy and provided Customs with it. . . What I said was Customs -Customs is more familiar with invoicing and so on because it relates to air - you know, airplanes and that type of stuff and cargo and so on. That's why I gave it to them. Plus, they were doing most of the analysis on the documents anyway. . Well, if I know how much money is actually legitimately being generated by Rasmark, then I can try to corroborate - corroborate through other - other means to see if there is a big difference in number". Acosta went on to testify that he did not find a big difference on the Rasmark invoices. Acosta testified that he received the records two or three months later, in or about April of 1993; that he reviewed the records and found no evidence of irregularities that would lead him to believe any type of kickback scheme or other criminal violation occurred between Rasmark and Gantkessey. See Deposition of Joe Acosta, January 24, 1997, Page 84, L4 - Page 91, L25. Therefore, Defendants Lappe, Frost, Schroeder and Holland knew, or should have known, that the information disclosed in the July 26th letter and

meetings of August 18th and September 24th of 1993 was highly inflammatory and false. Neither did the Defendants ever make any effort to correct the agency system of records, or give any of the Plaintiffs an opportunity to explain any alleged facts before disclosing such highly inflammatory facts to Ford Motor Company, violating the Plaintiffs' due process and equal protection rights as guaranteed by the Fifth and Fourteenth Amendments to the U. S. Constitution. *See Rolf v. City of San Antonio*, 77 F.3d 823, 828 (C.A.5(Tex.)1966).

36. Moreover, In *Siegert* referring to *Paul v. Davis*, 424 U.S. 693 (1976),(where the local police chiefs placed plaintiff's photograph in a "flyer" of "active shoplifters" after being arrested for shoplifting which was eventually dismissed), the ". . . the plaintiff filed suit under 42 U.S.C. § 1983. . . alleging that the officials' actions inflicted a stigma to his reputation that would seriously impair his future employment opportunities, and thus deprived him under color of state law of liberty interests protected by the Fourteenth Amendment. We rejected the plaintiff's claim, holding that injury to reputation by itself was not a "liberty" interest protected under the Fourteenth Amendment. . . our reference to a governmental employer stigmatizing an employee . . . was made in the context of the employer discharging or failing to rehire a plaintiff who claimed a liberty interest under the Fourteenth Amendment. Defamation, by itself, is a tort actionable under the laws of most States, but not a constitutional deprivation. The facts alleged by Siegert cannot, in the light of our decision in *Paul v. Davis*, be held to state a claim for denial of a constitutional right. . . The alleged defamation was not uttered incident to the termination of Siegert's employment by the hospital, since he voluntarily resigned from his position at the hospital, and the letter was written several weeks later." See *Siegert* at 233, 234.

37. In the present case, unlike in either *Paul v. Davis* or *Siegert* the Plaintiffs allege that subsequent to the July 26, 1993 letter of Defendant Lappe, the August 18, 1993 and September 24, 1993 meetings between Defendants Frost, Schroeder, Holland and the Ford Motor Company, Plaintiff Gantkessy was terminated by Ford Motor Company and the remaining Plaintiffs were terminated by Ford Motor

Company as its primary cargo charter service out of El Paso, Texas. See Plaintiffs' Third Amended Complaint, filed March 14, 1996, Paragraphs 326-334.

38. THE COURT'S RULING THAT THE PLAINTIFFS HAVE FAILED TO STATE A CLAIM UNDER THE FOURTEENTH AMENDMENT IS CLEAR ERROR OF LAW.

39. The Court is respectfully referred to the Plaintiffs' discussion of the First, Fourth and Fifth Amendments in sections A-D above.

40. THE COURT'S RULING THAT ANY CLAIMS BY GANTKESSY ARISING OUT OF THE JULY 26, 1993 LETTER TO FORD MOTOR COMPANY LIE IN TORT IS CLEAR ERROR OF LAW.

41. The Court is respectfully referred to the Plaintiffs' discussion of some of their Fifth Amendment claims in section D above.

42. THE COURT'S RULING THAT ANY AND ALL TORT CLAIMS ASSERTED AGAINST INDIVIDUAL FEDERAL DEFENDANTS ARE TREATED AS TORT CLAIMS AGAINST THE FEDERAL GOVERNMENT UNDER THE FEDERAL TORT CLAIMS ACT IS CLEAR ERROR OF LAW.

43. The Court is respectfully referred to the Plaintiffs' discussion of their First, Fourth and Fifth Amendments claims. Clearly, the Plaintiffs are alleging constitutional torts and not simply common law torts.

44. THE COURT'S RULING THAT ALL LAW ENFORCEMENT DEFENDANTS WERE ACTING WITHIN THE COURSE AND SCOPE OF THEIR EMPLOYMENT IS

CLEAR ERROR OF LAW.

45. The Plaintiffs clearly sued all of the federal defendants only in their individual capacity. The Caption of the complaint states after listing all of the federal defendants that they "are sued in their individual capacity." In Paragraph 3 of the complaint the Plaintiffs state ". . . and bring this lawsuit against federal defendants in their individual capacity and private defendants acting under color of law under the Bivens Docrine." The Plaintiffs are not seeking damages pursuant to the FTCA.

46. **THE COURT'S RULING CHARACTERIZING PLAINTIFFS' CLAIMS ONLY AS TORT AND NOT ACTIONABLE UNDER THE FTCA: DEFAMATION AND INTERFERENCE WITH CONTRACTUAL AND EMPLOYMENT RELATIONS IS CLEAR ERROR OF LAW.**

47. See the Plaintiffs' discussion of their First, Fourth and Fifth Amendment cliams.

48. **THE COURT'S RULING CHARACTERIZING PLAINTIFFS' CLAIM ONLY AS ABUSE OF PROCESS NOT ACTIONABLE UNDER FTCA FOR FAILURE TO MEET JURISDICTIONAL PREREQUISITES IS CLEAR ERROR OF LAW.**

49. See the Plaintiffs' discussion of their First, Fourth and Fifth Amendment cliams.

50. **THE COURT'S RULING THAT THE PLAINTIFFS' HAVE FAILED TO STATE A CLAIM AGAINST EITHER THE CITY OR COUNTY OF EL PASO UNDER § 1983 IS CLEAR ERROR OF LAW.**

51. A motion to dismiss an action for failure to state a claim

"admits the facts alleged in the complaint, but challenges plaintiff's right to relief based upon those facts." *Crowe v. Henry,* 43 F.3d 198 (C.A.5 (La.) 1995), quoting from *Ward v. Hudnell,* 366 F.2d 247, 249 (5th Cir.1966). Dismissal cannot be upheld unless it appears beyond doubt that the plaintiffs would not be entitled to recover under any set of facts that they could prove in support of their claim. *Conley v. Gibson,* 355 U.S. 41, 45-46, (1957); *Worsham v. Pasadena,* 881 F.2d 1336, 1339 (5th Cir.1989). The Plaintiffs have alleged that both the City and County of El Paso have adopted the policy as set forth in the "Policies and Procedures Employee's Manual/Handbook, El Paso County Metro Narcotics Task Force-Financial Disruption Unit. The fact that all of the defendants' home agency is listed as a member of the El Paso County Metro Narcotics Task Force-Financial Disruption Unit and each home agency is a member of each other's respective task forces supports the Plaintiffs' allegation that the policy in question is either officially adopted, ratified or acquiesced to by policy making authority for each home agency. At the very least the policy of secrecy can be construed as a custom, in conjunction with the custom of letting the federal agents take over all multi-agencies task force even though the city or county has the right to be the lead agency as well. Specifically, Sheriff Leo Samaniego states that "[a]s part of my efforts towards combating the growing drug trade invading in El Paso County, I agreed to assign officers Jerry Keith and Neil Baker to a task force comprised of law enforcement officers from various agencies. The task force was organized and directed by federal law enforcement agencies and officers. No officer of the El Paso County Sheriff's Department had a supervisory role within this task force." See Affidavit of Leo Samaniego, Paragraph 2. The fact that Defendant Holland states he was assigned to the task presumably by the City demonstrates that he was enforcing a city policy of participating on multi-agency task force. Furthermore, the Plaintiffs also allege that the enforcement of the policy of secrecy resulted in constitutional violations of the Plaintiffs' rights, in that the respective officers were forbidden to discuss their task force activities with their home agency supervisor. This policy of secrecy led to failure to supervise and the city and county knew, or should have known, that such failure would lead to constitutional violations. Defendant Baker testified to wanting to transfer because he was tired of

the pressure. Baker testified that ". . . [t]he pressure I was getting is I had a supervisor over here [task force]. And my supervisor from the sheriff's department and the supervisor from Customs, they had a personality conflict. And I am in the middle. I'm being told by this gentleman here to do one thing and I'm told by this gentleman here to do another thing. Well, after a while, you get in the middle and you want out. And I requested to be taken out." See Deposition of Neil Aaron Baker, Page 69, L9-22. In further support of the Plaintiffs' claim that this policy or custom of secrecy exist, Defendant Holland testified about his supervisor attending a few meetings early on; that "they asked me for things, but they knew there were things that I could not discuss with them which I testified to previously because of Grand Jury secrecy, right? So, there are some things I couldn't talk to them, but they did at one time ask for a report once in a while as to, 'Is everything still going? Are you still working? Do they still need you,' that type." See Deposition of James Holland, Page 81, L7 - Page 82, L25. Therefore, the Plaintiffs have presented substantial fact questions, and as a matter of law, the defendants' summary judgment should be denied.

52. **THE COURT'S RULING THAT PLAINTIFFS' CLAIMS AGAINST DEFENDANT BEACH AND HINES ARE UNTIMELY, ALTERNATIVELY, ARE BARRED BY 19 U.S.C. § 507(b).**

53. Because of the lack of full discovery, the Plaintiffs were unable to obtain all of the dates for each contact between Beach, Hines and the federal and state defendants. Therefore, a fact question exist as to when the statute of limitations began to run. Section 507(b) requires "good faith". Defendants Beach and Hines have failed to demonstrate that they were acting in good faith when they knew they were providing rumors and/or gossip information to customs agents. Defendant Beach and Hines' credibility are in question because of their natural bias resulting from being a fierce competitor of the Rasmusson and Rasmark--getting rid of Rasmark as a competitor would directly increase their bottom line.

54. **THE COURT'S RULING ALL INDIVIDUAL**

DEFENDANTS, OTHER THAN BEACH AND HINES, ARE ENTITLED TO QUALIFIED IMMUNITY IS CLEAR ERROR OF LAW.

55. See the Plaintiffs previous discussion of their First, Fourth, Fifth, and Fourteenth amendment claims.

56. **THE COURT'S RULING THAT PLAINTIFFS CLAIMS AGAINST MANY OF THE DEFENDANTS WERE UNTIMELY BROUGHT IS CLEAR ERROR OF LAW.**

57. See the Plaintiffs "Cross Index of Constitutional Violations in Plaintiffs' Third Amended Complaint" where the plaintiffs show based on continuing violation that all their claims fall within the statute of limitations.

"On summary judgment, the judge appropriately may determine, not only the currently applicable law, but whether that law was clearly established at the time an action occurred. If the law at that time was not clearly established, an official could not reasonably be expected to anticipate subsequent legal developments, nor could he fairly be said to "know" that the law forbade conduct not previously identified as unlawful. Until this threshold immunity question is resolved, discovery should not be allowed. If the law was clearly established, the immunity defense ordinarily should fail, since a reasonably competent public official should know the law governing his conduct. Nevertheless, if the official pleading the defense claims extraordinary circumstances and can prove that he neither knew nor should have known of the relevant legal standard, the defense should be sustained. But again, the defense would turn primarily on objective factors. By defining the limits of qualified immunity essentially in objective terms, we provide no license to lawless conduct. The public interest in deterrence of unlawful conduct and in compensation of victims remains protected by a test that focuses on the objective legal reasonableness of an official's acts. Where an official could be expected to know that certain conduct would violate statutory or constitutional rights, he should be made to hesitate; and a person who suffers injury caused by such conduct may have a

cause of action. But where an official's duties legitimately require action in which clearly established rights are not implicated, the public interest may be better served by action taken "with independence and without fear of consequences."

58. In the present case, the Court's Opinion misstates the Supreme Court's holding in *Harlow*. No where does *Harlow* state that "[o]nce a government official or employee has asserted qualified immunity and established that the allegedly wrongful acts were undertaken within the scope of his discretionary authority, the burden shifts to the party seeking damages to show that qualified immunity does not bar recovery." What the Supreme Court did say is that "On summary judgment, the judge appropriately may determine, not only the currently applicable law, but whether that law was clearly established at the time an action occurred. If the law at that time was not clearly established, an official could not reasonably be expected to anticipate subsequent legal developments, nor could he fairly be said to "know" that the law forbade conduct not previously identified as unlawful. Until this threshold immunity question is resolved, discovery should not be allowed. If the law was clearly established, the immunity defense ordinarily should fail, since a reasonably competent public official should know the law governing his conduct. Nevertheless, if the official pleading the defense claims extraordinary circumstances and can prove that he neither knew nor should have known of the relevant legal standard, the defense should be sustained."

59. The threshold inquiry in the determination of a qualified immunity claim is whether the Plaintiffs allege the violation of a clearly established constitutional right. The present Court admits in its own Opinion that the Plaintiffs have met the threshold inquiry. See Memorandum Opinion and Order, Page 13 where it states "[h]ere, Plaintiffs claim that at various times their First, Fourth, Fifth and Fourteenth Amendment rights were violated. Needless to say, these are clearly established constitutional rights."

WHEREFORE PREMISES CONSIDERED, Plaintiffs respectfully request the Court to grant Plaintiffs' motion for new trial and a hearing on same.

Respectively submitted,

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No. 98-1345

In The

Supreme Court of the United States

October Term, 1998

MARK B. RASMUSSON, et al.,

Petitioners,

vs.

LAWRENCE E. FROST, et al.,

Respondents.

On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Fifth Circuit

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ISSUES PRESENTED

Issue No. One	Petitioners failed to raise any cause of action against Respondent Aero Freight, Inc.
Issue No. Two	Petitioners claims against Respondents Gail Beach and Chris Hines are barred by the applicable statute of limitations.
Issue No. Three	Respondents Gail Beach and Chris Hines are immune from civil liability under 19 U.S.C. § 507(b).

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CASE HISTORY

The Petitioners' original complaint was filed with the District Court for the Western District of Texas on November 21, 1995 alleging civil rights and implied state tort violations against various law enforcement agencies, their agents, and Respondents, AERO FREIGHT, INC., GAIL BEACH and CHRIS HINES. (Petitioners' Third Amended Original Petition, Appendix B). Petitioners' attempt to allege causes of action against Respondents, BEACH and HINES for slander, civil conspiracy, simple and gross negligence, tortuous interference with business relations, and violations of 42 U.S.C. § 1983. These allegations are based on alleged statements BEACH and HINES gave to law enforcement authorities. (Petitioners' Recorded Excerpts, Appendix E). After sufficient opportunity for discovery and after Petitioners had amended their complaint twice, all defendants filed motions for summary judgment. These motions were granted. On May 27, 1997, the District Court issued a final order, and later denied all motions for reconsideration and new trial. (Petitioners' Appendix A, pp. 1-2; memorandum opinion and order pp. 3-93; Petitioners' Record Excerpts, Appendix E).

Petitioners filed an appeal of the District Courts decision in the United States Court of Appeals for the Fifth Circuit. In a two paragraph opinion, rendered on November 9, 1998, the Court of Appeals stated that Petitioners were merely complaining of being the targets of a criminal investigation. The Court of Appeals made reference to the District Court's Memorandum Opinion and Order as a comprehensive and convincing rationale for determining that Petitioners failed to state a claim, their claims

were barred by limitations and concluded that Petitioners were entitled to no relief. (Petitioners' Court Orders, Appendix A. p. 2). The Court of Appeals agreed with the District Court's decision to grant summary judgment in favor of Respondents, AERO FREIGHT, INC., BEACH and HINES.

Petitioners now seek a Writ of Certiorari from the United States Supreme Court. Allegations against Respondents, BEACH and HINES can only dimly be deduced from Petitioners' "Statement of the Case". Petitioners' claim that rumors and/or false information was knowingly and intentionally relayed from Respondents, BEACH and HINES to law enforcement officials for the purpose of causing Petitioners harm. There are no allegations of wrongdoing against AERO FREIGHT, INC. in Petitioners' reasons for granting the writ. (Petition for Writ of Certiorari, p. 12). Petitioners' Reason Number III for granting the writ makes reference to this pertinent allegation, but limits the scope as applying only to "Respondents-Subordinates". (Petition for Writ of Certiorari, p. 27).

STATEMENT OF THE CASE

The petition seeks review of the Fifth Circuit's opinion approving summary judgment as to Respondents, AERO FREIGHT, INC., BEACH and HINES. Petitioners' contention that the Fifth Circuit decided important federal questions in a way that conflicts with relevant decisions of this Court is flatly wrong.

As detailed below, there is no cause for the Court to review Petitioners' factbound argument, which has now been rejected by the District Court and by Per Curiam Opinion of the Fifth Circuit Court of Appeals. The Fifth Circuit Court of Appeals agreed with the District Court's categorization that the complaint in this action reads like a script for an Oliver Stone movie rather than a suit for civil damages. (Petitioners' Appendix A, p. 2). More importantly, the Court of Appeals found that Petitioners were not entitled to relief because, among other reasons, they failed to state a claim against AERO FREIGHT, INC.; their claims against Respondents, BEACH and HINES were barred by limitations, and Respondents, BEACH and HINES were entitled to summary judgment based on immunity.

Issue No. One

Petitioners failed to raise any cause of action against Respondent AERO FREIGHT, INC.

The District Court clearly found that Petitioners failed to assert any claims whatsoever against AERO FREIGHT, INC. (Petitioners' Record Excerpts, Appendix E). Neither did Petitioners allege that the conduct of Respondents, BEACH and HINES was done in the course and scope of employment with AERO FREIGHT, INC. Summary judgment was granted on behalf of AERO FREIGHT, INC. for the simple reason that Petitioners failed to state any cause of action against it, or even allege any facts to support a cause of action. Moreover, Petitioners failed to raise any issues or claims in this appeal as to AERO FREIGHT, INC. Therefore, there are

no genuine issues for trial as to AERO FREIGHT, INC. and Petitioners' claims against AERO FREIGHT, INC. fail as a matter of law.

Issue No. Two

Petitioners' claims against Respondents, Gail Beach and Chris Hines are barred by the two year statute of limitations.

Simply stated, Respondents, BEACH and HINES, argued for summary judgment based on limitations and the District Court and the Fifth Circuit Court of Appeals agreed. (Petitioners' Record Excerpts, Appendix E). Petitioners in this appeal have failed to raise or address the issue of limitations.

Petitioners' 30-page Petition for Writ of Certiorari to the United States Supreme Court mentions Respondents, BEACH and HINES only briefly in recounting the facts, but then completely fails to implicate Respondents, BEACH and HINES in their questions for review. Petitioners' Question III argues that the President of the United States cannot avoid liability for lying about his most personal and intimate life, hence "respondents-subordinates" should not be permitted to lie either. (Petition for Writ of Certiorari, p. 27). Without directly addressing the merits of Petitioners' arguments concerning the President, it should be noted that Petitioners limit their complaint to alleged lying on the part of unidentified "respondents-subordinates". Respondents, BEACH and HINES are not, nor have they ever been referred to as subordinates of any of the named respondents.

Although not entirely clear from reviewing the petition for Writ of Certiorari, Respondents, BEACH and HINES assume that Petitioners are attempting to allege causes of action for slander, civil conspiracy, simple and gross negligence, tortuous interference with business relations and violations of 42 U.S.C. § 1983 based on statements given to law enforcement authorities. There is no federal limitations for actions brought under 42 U.S.C. § 1983. Instead, state statutes governing limitations on alleged tortuous acts sets the applicable limitations period. *Owens v. Okure*, 488 U.S. 235, 249-50, 109 S.Ct. 573, 582, 102 L. Ed. 2d 594 (1989); *Jackson v. Johnson*, 950 F.2d 263, 265 (5th Cir. 1992). The statute of limitations for a slander cause of action, as prescribed by Texas law, is one year. *Texas Civil Practices & Remedies Code § 16.002.* The statute of limitations for all other causes of action, as proscribed by Texas law, is two years. *Texas Civil Practices & Remedies Code § 16.003.*

Petitioners filed their Original Complaint on November 21, 1995. (Petitioners' Record Excerpts, Appendix E). It is undisputed that law enforcement authorities spoke with BEACH and HINES for the last time in September of 1993. (Petitioners' Record Excerpts, Appendix E). Petitioners have pled no facts, nor discovered any evidence showing otherwise. Petitioners clearly filed their lawsuit after the limitations period.

A reading of Petitioners' entire petition reveals Petitioners' hopes and aspirations that the continuation of actionable conduct within the limitations period by Conspirator A, somehow ensnares Conspirator B, whose actionable conduct lies entirely outside the limitations period. Unable to identify any conduct on the part of

BEACH and HINES within the limitations period, Petitioners are thus left to cling to their "continuation" theory. This is not the law in the Fifth Circuit.

In *Turner v. Upton County, Texas*, a case with strictly similar facts, Plaintiff Turner brought a § 1983 action against Upton County, its former sheriff, the district attorney, and a private individual for conspiring to deprive her of her civil rights. In essence, she alleged that the sheriff paid an informant to plant drugs at Turner's business premises, and that the sheriff and informant later conspired, along with the district attorney, to force Ms. Turner to stand trial on a trumped-up charge. Like Rasmusson, Turner was tried and eventually acquitted.

Turner then filed civil suit against those who testified against her in the criminal trial. Turner's suit, which was based on 42 U.S.C. § 1983, alleged that named defendants violated Turner's due process rights. In finding that Turner's claims were barred by limitations, the Fifth Circuit Court of Appeals held that liability could be imposed only if there was sufficient evidence of an overt act in furtherance of the conspiracy committed within the statute of limitations. Again, like Rasmusson, Turner was unable to present admissible evidence to this effect. *Turner v. Upton County, Texas*, 967 F.2d 181 (5th Cir. 1992, reh. den.).

Issue No. Three

Respondents, Gail Beach and Chris Hines are immune from civil liability under 19 U.S.C. § 507(b).

19 U.S.C. Sec. 507(b) holds in pertinent part that:

> Any person other than an officer or employee of the United States who renders assistance in good faith upon the request of a customs officer shall not be held liable for any civil damages as a result of the rendering of such assistance if the assisting person acts as an ordinary, reasonably, prudent person would have acted under the same or similar circumstances.

To the extent BEACH and HINES provided any information to agents of the United States Customs Service, about which Petitioners complained, such conduct is immune from suit. Petitioners have offered not one shred of evidence that BEACH or HINES failed to act in good faith during interviews with Customs Agents. Moreover, Petitioners on appeal have failed to address the issue of immunity under 19 U.S.C. § 507 and thus have waived any complaint.

REASONS FOR DENYING THE WRIT

1. Plaintiffs have named AERO FREIGHT, INC. as a party Defendant in its original petition to the suit, but failed to allege any causes of action against it. Accordingly, AERO FREIGHT, INC. was dismissed from the case by the District Court on grounds that no claims have been asserted against it. The Fifth Circuit Court of Appeals upheld that decision. The decisions below were plainly

correct applications of law. In Petitioners' petition for Writ for Certiorari, there are no allegations to the contrary against AERO FREIGHT, INC. and thus, Petitioners' claims against AERO FREIGHT, INC. are meritless.

2. According to Petitioners' last filed complaint, Respondents, BEACH and HINES provided false information to law enforcement officers in order to "do in" their competitor, Rasmark. Petitioners' complaint reads:

> On March 9, 1993, Defendants Frost and Mills . . . conducted an interview with Gail Beech (sic), owner of Aero Freight of El Paso, a direct competitor, and former business associate, of Rasmark. Majority, if not all, of the information that Gail Beach told to Frost and Mills were based on rumors and disinformation that she had heard, mainly from former, disgruntled employees. Beach told the agents that her information was based largely on rumors. (Petitioners' Third Amended Original Petition, Appendix B, Petitioners' Court Orders, Appendix A, p. 76).

Petitioners complain that Respondent Frost then used the information given him by Respondent Beach in an affidavit supporting his request for a search warrant on November 19, 1993. Agents also met with Respondent Hines on March 16, 1993 and Petitioners allege that Respondent Hines engaged in misinformation and rumor mongering, and that his statements also made their way into Agent Frost's November 19, 1993 affidavits. Both Respondents, BEACH and HINES offered sworn affidavits stating they met with agents only one time each, on March 9 and March 16, 1993 respectively. BEACH and HINES swore that at all times they responded truthfully

to the questions posed and provided information in good faith. Customs Agents Schroeder and Frost, Respondents in this lawsuit, have corroborated BEACH and HINES' affirmations. Agent Schroeder, who interviewed Respondent Hines on March 16, 1993, stated that he called Hines five to six times after the interview to clarify details previously discussed, but that no contact with Hines was made after July 1993. Likewise, Agent Frost, who interviewed Respondent Beach, indicated that other than a few post-interview calls to clarify details of their conversation, no contact with Beach was made after September 1993. Plaintiffs' complaint was filed on November 21, 1995, more than two years after the absolute last contact agents had with Respondents BEACH and HINES.

For limitations purposes, the question becomes when Plaintiffs knew or should have known of the complained of acts. This question is answered by Mark Rasmusson himself. In his affidavit, Mr. Rasmusson states, in several places, that he was aware that Respondent BEACH was furnishing false, misleading and slanderous information to Customs agents. Paragraph 23 of Mr. Rasmusson's affidavit reads:

> My employees and my business competitors were interviewed. One competitor, Gail Beech (sic), owner of Aero Freight, used these interviews to furnish false, misleading, and slanderous information about me and Rasmark to USCS and later to officials of Ford Motor Co., one of my major customers.

Mr. Rasmusson makes similar allegations in paragraphs 10, 27, 39. (Petitioners' Affidavit Excerpts, Appendix C,

pp. 262-63). The District Court found, and the Fifth Circuit Court of Appeals affirmed that the chronology of the paragraphs in his affidavit leads to the conclusion that Mark Rasmusson knew as early as 1989 that Gail Beach was making allegedly slanderous statements to Customs agents concerning Rasmark. The record before this Court is devoid of any evidence to the contrary. If Petitioners seek to hold Respondents, BEACH and HINES liable for defamation, their claim is time barred. TEX. CIV. PRAC. & REM. CODE § 16.002.

3. If Plaintiffs seek to hold BEACH and HINES liable for providing information to Customs agents in the course of an investigation, the two are immune from civil liability for their actions under 19 U.S.C. § 507(b). That section reads, in part:

> Any person other than an officer or employee of the United States who renders assistance in good faith upon the request of a customs officer shall not be held liable for any civil damages as a result of rendering such assistance if the assisting person acts as an ordinary, reasonably prudent person would have acted under the same or similar circumstances.

Both Respondents, BEACH and HINES have sworn that they responded to the inquiries truthfully and provided information in good faith. Plaintiffs' uncorroborated allegations that BEACH and HINES engaged in misinformation, without more, is certainly not enough to defeat Respondents' affirmations that they acted as ordinary, reasonably prudent individuals. Thus, notwithstanding the fact that Plaintiffs' claims against BEACH and HINES

fail on limitations grounds, BEACH and HINES are likewise immune from civil liability under 19 U.S.C. § 507(b).

The Petitioners are thus challenging settled law and sound policy, and their effort to do so does not call for this Court's review.

CONCLUSION

A Review of a Writ of Certiorari is an extraordinary remedy that is available only in limited circumstances and is appropriate only when there are special and important reasons therefor. 28 U.S.C. §§ 1254, 1257. Additionally, a review on writ of certiorari is not a matter of right, but of judicial discretion. *Id.* Petitioners have failed to state causes of action against Respondents, AERO FREIGHT, INC., BEACH and HINES at the District Court, at the Fifth Circuit Court of Appeals, and now, again, before this Court. Their allegations at each and every level have been vague and conclusory. For the reasons

given above, the Petition for Writ of Certiorari should be denied.

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